EIRENARCHA:
or of
The Office of the
Iuſtices of Peace, in
two Bookes:
Gathered. 1579. and now
reuiſed, and firſte publiſhed, in
the. 24. yeare of the peace-
able reigne of our gra-
tious Queene ELI-
ZABETH:

By WILLIAM LAMBARD
of Lincolnes Inne Gent.

Hæ tibi artes erunt, paciq; imponere morem.

AT LONDON:
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ANNO. DOM.
1581.

To the right Worſhipfull, mr Thomas Egerton
Eſqyer, Sollicitour to the Queenes Matie,

his in duetie muche beholden,
William Lambarde


TIME DOMINVM
ET RE=
CEDE A MALO:-

TO THE RIGHT HONORABLE, SYR Thomas Bromley, Knight, Lord Chauncelour of England.

AFTER ſuche tyme as it liked you (Right honorable) to commaunde my name to be put into the Commiſſion of the Peace for Kent, I thought it my part, aſwel for ſauing you (my ſpeciall good L. and ſauourer) blameleſſe in the Choice, as alſo for mine owne Information and diſcharge in the Seruice it ſelfe, to looke diligently into that portion of our Lawe which concerneth the office of the Peace, wherewith I had before that time very litle or none acquaintance. And therefore, in greedie appetite, I beganne firſt with M. Fitzherbertes treatiſe of the Iuſticers of Peace: then went I to an other auncient booke, of the ſame Argument, but of an Author vnknowen to me, and thirdly I came to M. Marrowes reading. All which when I had peruſed, I ſeemed to my ſelfe to haue taken ſome ſuch taſte of the thing that I ſought, as did rather incenſe than ſatisfie my thirſte and deſire.

Wherefore, ſeeking after a full meale, and calling to minde that it was truely ſayd,

Gratiùs ex ipſo fonte bibuntur aquæ,

I betooke me to the olde and newe bookes of the Common Lawes, and to the volumes of the Actes and Statutes, and

(notwithstanding the slipperinesse of mine owne memorie) I did vpon a seconde reading plot the matter with my penne, and made (as it were) a Module thereof in a small booke, wherein I brought together stuffe of each kinde, sorted in heapes, & layed readie to be wrought and framed.

Howbeit, I did not then purpose, to haue waded any deeper in this foorde, as fearing that the water was higher than my head, and thinking it sufficient for mine owne priuate vse, to haue some serviceable furniture ready at hand, though otherwise neither much orderly digested nor painfully pointed.

But, when as (through dayly occasion to vse that booke abroad) I had emparted it with other men, I was perswaded by sundrie godly, wise, and not vnlearned gentlemen, my friendes, that the more parte of the Iustices of the Peace, at this day had needs of some helpe in writing for their better conduict in that office, & that it might increase the knowledge of many of them, and consequently doe a common good, to haue the booke made common by Impression.

Then againe, I tooke the booke into my handes, and ripping (stitche by stitche) my former doing, I enlarged the worke, breathing vnto it more breathe & roome of speache: I planted Precedentes here and there in it: I gaue it some light of Order & Methode: and added withall some delight of historie and Record: Finally, framing it altogether to common conceipt and practise, I prouided (as I might) both for profite and pleasure, and fraught and laded it with the best ware of counsell and aduice that I had of myne owne, or could borrowe of my friendes, determining so to send it from the Cape of good Hope, and to aduenture it to the Seas and windes of the Iudgements and reportes of other men.

The same now (my singular good L.) though neither answearable to your woorthinesse, nor to myne owne wish, I am bold to presente vnto you, being thereunto carried by these respectes.

First, trusting that you, which doe goe before them all (in the perfect knowledge of our Lawe) that haue gone before you in that honourable place which you now holde, will according to the Rule of lawe (in your owne handes) ratifie the Commission

Son of the Peace, and some other crookednesse, whereof this booke shall bring complaint before you.

Secondly, assuring my selfe, that if you shall not condemne or Cancell it, but shall allow it, and seale (as it were) this Writte De pace for it, then both I shall finde the better comfort and defence, and the booke it selfe shall haue the more curteous entertainment and freer passage with other men.

Lastly, wishing that it may remaine a perpetuall Monument of the Sacrifice of mine owne thankefulnesse for those your rare and long continued fauours, from time to time (euen vndeseruedly) bestowed and cast vpon me.

Vouchsafe therefore I pray you (my verie good L.) this slender gift, as the hand and from the heart of him, who (if he had equall mixture of might, to his minde) would giue you that which should be proportionable to the setting foorth of your Honour, and the acquitall of his owne dutie and deuotion towardes you.

The Lord of Lordes, blesse (you for his Christes sake) with the spirit of godly and courageous wisedom, and make you a long and happie Counsailour of this Estate, to the furtherance of his holy Gospell, the weale of the English nation, the true seruice of the Queenes Maiestie, and your owne Honourable and long lasting memorie. Amen.

From Lincolnes Inne, this 27. day of Ianuarie. 1581.

Your H. most humble, and readie to be commaunded in the Lord,
WILLIAM LAMBARD.

A Table of the Contents.

The Contents of the Chapiters in the first Booke.

The Proheme. Pag. 1

CAP. 1. What Iustices of the Peace bee: and why called *Iustices.* 3

2 Of the signification of the word, *Peace.* 4

3 Of such as had the *Conseruation* of the Peace at the commune lawe. 11

4 Of the first ordayning of the *Wardens* and *Iustices* of the Peace by Statute law. 20

5 By whose auctoritie, and by what meanes *Iustices* of the Peace bee appointed, and of what sortes they be. pag. 26

6 What manner of men the *Commissioners* of the Peace ought to bee. 32

7 How many *Commissioners* of the Peace there ought to bee in eache Countie. 36

8 The forme of the *Commission* of the Peace. 39

9 Certaine obseruations, cõcerning the matter & forme of the *Commission* of the Peace. 46

10 Of the two oathes miniſtred to the *Iustices* of the Peace. 57

11 Of the power absolute and limited, that the *Iustices* of the Peace haue. 63

12 Of the *Iurisdiction*, and *Coertion*, belonging to the *Iustices* of Peace. 65

13 That *Iustices* of the Peace bee Iudges of *Record.* 69

14 How long time the auctoritie of the *Commissioners* of the Peace is to endure, and by what meanes it may bee suspended, or determined. 74

15 That all the auctoritie of the *Iustices* of the Peace is exercised either out of the *Sessions*, or at (or by reason of) the *Sessions* of the Peace. 80

16 Of *Suertie* of the Peace, and the *Good abearing*, and of sundrie things incident vnto the same, & what one *Iustice*

Iustice of Peace out of the Sessions may do therein. 82

17 Of the *Breache* of the Peace without a *Multitude*, against the person, and howe it may be stayed or punished by one *Iustice* of Peace out of the Sessions. pag. 132

18 Of the *Breache* of the Peace without a *Multitude*, or with a Multitude by forcible entrie into landes, or tenementes, and what one *Iustice* of Peace out of the Sessions may doe therein. 145

19 Of other breaches of the Peace with a multitude, as by Riot, Rout, or vnlawfull assembly &c. And what one *Iustice* of Peace out of the Sessions may doe therein. 172

20 What other things one *Iustice* of the Peace alone, may doe out of the *Sessions*, by vertue of Statutes mentioned in the *Commission*. 184

21 What other things one *Iustice* of the Peace may doe, out of the *Sessions*, by the power of other Statutes not mentioned in the *Commission*. 190

22 What things any two *Iustices* of the Peace may do out of the *Sessions*. 227

23 What things some two *Iustices* of the Peace may doe out of the *Sessions*. 246

24 What things, three, or moe, *Iustices* of the Peace may do out of the *Sessions*. 273

25 Of the Rewarde, and punishment of *Iustices* of the Peace for things done, not done, or missdone, out of the *Sessions* of the Peace. 276

The Epilogue. 281

The Contentes of the Chapiters in the second Booke.

The Proheme. 283

1 The description of the *Sessions* of the Peace. 284

2 Who shall appoint the *Sessions* of the Peace, and howe, and

and where. 289
3 What persons ought to appeare at the *Sessions*: And therein of the *Clarkes Rotulorum*, the *Recordes* of the *Sessions*, and the *Clarke* of the Peace, and howe the *Iurours* ought to be qualified and ordered. 294
4 Of the Articles that are to be giuen in charge at the *Sessions* of the Peace. 310
5 Of the *Endisements* and *Presentments* giuen by the *Iurours*: and of the matter and forme, and receiuing and reiecting of them. 383
6 Of the *Presentments* and *Informations* of *Officers*, and other men. 403
7 Of the Impediments of proceeding vpon *Endisements* before *Iustices* of Peace. 409
8 Of the *Processe* vpon Endisements and Informations. pag. 415
9 Of hearing vpon *Confession*. 426
10 Of hearing by *Discretion*. 428
11 Of hearing or Triall vpon *Examination*. 431
12 Of Triall or hearing by *Certificat*. 434
13 Of hearing or Triall by *Trauerse*. 436
14 Of Triall vpon *Araignment*, and therewithall of *Felonies*. 445
15 Of *Iudgement*. 453
16 Of the Proceile for the *Fine* of the *Queene*, and of the assessing thereof: and of *Estreating* for the Queene. pag. 458
17 Of *Executorie Processe*, and execution for the parties that sue, or for other persons. 469
18 Of Certifying *Recordes* of the *Sessions* of the Peace to other Courts, or Officers. 472
19 Of the *Generall* or *Quarter Sessions* of the Peace. 477
20 Of the *Speciall Sessions* of the Peace. 500
21 Of the *Rewardes* and *Punishments* due to *Iustices* of the Peace in respect of their *Sessions*. 503
The Epilogue. 518

The ende of the Table.

EIRENARCHA:

Or, of the Office of the Iustices of Peace.

THE PROHEME.

TO write of the Office and Duetie of Iustices of the Peace, after M. Marrowe (whose learned Reading in that behalf made the .xviij. yeare of King Henrie the seauenth, is in manie handes to bee seene) and after Iustice Fitzherbert (who published an excellent treatise thereof, which is yet euery where to bee had) may at the firste seeme no lesse vnaduisedly done, than if a man shoulde bring Owles to *Athens* (as the Prouerbe is,) or sticke into a growing Wood or Copise. Howbeit, if it be considered, that since their time, this Office is charged with manie Statutes, which were not made when their writings were

penned: and if it bee weighed also, that sundry things in them had thē the force of law, which now at this day they haue lost by alteration of like authoritie: It cannot bee thought altogither in vayne, to conferre their writings with the Booke cases, & Statutes that haue arisen of latter tymes, and out of them all to collect some discourse, that may serue for the present age wherein wee now line, and somewhat further the good endeuour of such as bee not trained vp in the studie of the lawes. In which doyng, as I meane to robbe no man of his right, but to yéeld to eche one the due prayse of his owne, fearing, least (as the Poet sayd)

Moueat Cornicula risum,
Furtiuis nudata coloribus:

So if I my selfe shal be found here and there to dissent in opinion from other men, I desire heartilie that my good meaning bee not euill interpreted, that my allegations and reasons be weighed indifferently, and that the respect of my person bring no preiudice to the thyng in question.

What Iustices *of the* Peace *bee: and why called* Iustices.

CHAP. 1.

IVSTICES of the Peace, bée Iudges of Recorde, appointed by the Quéene to bée Iustices within certaine limites, for the Conseruation of the Peace, and for the execution of sundrie thinges comprehended in their Commission, and in diuers lawes committed vnto them.

A definition (or description) of *Iustices* of the *Peace*.

These, and many other Iudiciall officers in our lawe, be called Iustices *(per metonymiam subiecti)* bicause they doe (or should doe) lawe and Iustice. For in many olde Histories, the Chiefe Iustice of *England*, is termed, *Capitalis Iustitia*, and *Prima (post Regem) in Anglia, Iustitia*: and the Originall Writtes that are in M. Glanuils Booke (which was written vnder the raigne of king Henry the second) haue this forme, *quod sit coram me, vel Iustitijs meis*: And this (no doubt) was done of speciall purpose, and to the ende, that the mention of their name should put them in minde of their office, and should continually

Why they be called *Iustices*.

(as it were) sollicite them to administer Iustice, for whose sake they were appoynted. But in the dayes of King Henry the third, M. Bracton (who reduced the body of our law into Latine, and therein imitated the Methode of the Ciuile Lawyers) chaunged the worde *Iustuys*, into *Iustitiarijs*, (how Latine like, let them iudge that can skil) and setteth downe the Writtes accordingly, *coram Iustitiarijs nostris*. Since which tyme, not onely all our Writtes that commaund appearance before the Iustices at Westminster, do vse the word *Iustitiarijs*, but all Commissions of Sewers, of the Peace, of Oyer & Terminer, and such like, do obserue the same forme also.

And of this it commeth, that M. Fitzherbert (in his treatise of the Iustices of Peace) calleth them Iusticers (contractly, for Iusticiars) and not Iustices, as we commonly (and not altogither vnproperly) do name them.

Of the signification of the worde Peace.

CHAP. II.

Peace, hath many significations.

OF the Latine worde *Pax*, the Normans framed their *Paix*, and we out of that, our Peace: which name hath sundry significations

nifications in the holy Scripture: For there is an inward, and an outward Peace. And this inward Peace, is either good, or euill: First then, there is *pax apud Deum*, that is to say, our reconciliation made with God the father, by the death of Christ his sonne, who is *pax nostra*, and hath appeased the wrath of God for our sinnes. Out of this proceedeth another inward Peace, named the Peace of Cõscience, for that our Conscience is (by faith in Christ) at Peace, both with God, and it selfe. The euill inward Peace, is the same whereof our Sauiour Christ spake, saying, *pacem do vobis, non quemadmodum mundus dat*: And this Peace, the Kingly Prophet Dauid calleth *pacem peccatorum*, bicause it is no better than carnall securitie.

The outward Peace, hath respect to other men, and that is of two sortes also: the one is opposed (or set) against all maner of striuing and contention, whether it be in countenance, gesture, worde, or worke: of the which S. Paule spake to the Romans, in these wordes: *Si fieri potest, quantum in vobis est, cum omnibus hominibus pacem habetote*: And in the same meaning, the Latine men say, *pace tua*, by your leaue, or fauour, without your offence, or displeasure. The other is onely an abstinence from actuall force and offer of

violence, and is rather contrary to *arma, prælium*, and *bellum*, (which can not be without force, or armes) than it is to *lis, pugna*, or *certamen*, which (as Laurence Valla confesseth) may be *nudis verbis, & citra arma*. And hereof also our Sauiour Christ spake, whē he said, *Non veni vt mitterem pacem, sed gladium*.

Peace in our lawe.

The lawe of our Realme likewise, vseth the worde Peace diuersly, but yet so, as it is altogither occupied about these outwarde Peaces. For, as Cicero said of fraudes, *aliter leges, aliter Philosophi, tollunt astutias: leges quatenus manutenere res possunt, Philosophi quatenus ratione & intelligentia*: euen so may I truely affirme, that (in the matter of Peace) the lawe of God (which onely is the true Philosophy) respecteth the mynde & conscience, although the lawes of men doe loke but to the bodie, handes, and weapons.

Sometymes therefore, the word Peace is taken for Protection, or defence: as where M. Bracton calleth the Writtes of Protection, *Breuia de pace*: Sometymes (as it seemeth to me) it is taken for Rightes, Priuiledges, and Liberties, as in the othe of the Queene at hir Coronation, she sweareth, *Seruare Ecclesiæ Dei, Cleri, & Populi, pacem ex integro*: the meaning whereof is, (as I suppose) that she will maintaine eche degree and estate of hir Sub-

Subiects, as well Ecclesiasticall as Temporall, (for *Populus* comprehendeth all the Laitie) according to their seueral customes, Lawes, and Priuiledges. And sometimes it is taken for a withholding (or abstinence) from that iniurious force & violence, whereof I spake before. And this is it that is most commonly vnderstood by the worde Peace, in our lawe: and for the maintenaunce hereof chiefly, were these Wardens and Iustices of the Peace first made and appointed.

Peace, for *Iustices* of the *Peace*.

For Iustices of the Peace were not ordained (as some haue thought) to the ende to reduce the people, either to an vniuersall vnanimitie (or agreement) of mindes, which is in deed a thing rather to be wished for, than to be hoped after: Neither is it any part of their office, to forbid lawfull suites and controuersies (whiche neuertheless be disagreements of mindes:) But to suppresse iniurious force and violence, moued against the person, his goods, or possessions.

And ỹ this may appeare to be the minde of ỹ King, which first created these Wardens, or Iustices of the Peace (I meane King Edward the third) let me shew you the Writte that he in the first yeare of his raigne, and not many weekes before the Parliamente in which the Gardeins of the Peace, (which afterwards

terward obtained the name of Iustices of the Peace) were first ordeined, did sende to the Shirifes of eche Shire in Englande, bearing this forme: *Edwardus Dei gratia Rex Anglia, Dominus Hybernia, Dux Acquitania, Vicecomiti Kancia salutem. Quia dominus Edwardus, nuper Rex Anglia, pater noster, de communi assensu Prælatorum, Comitum, Baronum, & aliorum Magnatum, necnon Comunitatum totius regni prædicti, spontanea voluntate se amouit à regimine dicti regni, volens & cõcedens quòd nos (tãquam ipsius Primogenitus, & Hæres ipsius) regni gubernationem & regimen assumamus: Noscúe ipsius patris beneplacito in hac parte de consilio & auisamento Prælatorum, Comitum, & Baronum prædictorum annuentes, gubernacula suscepimus dicti regni, & fidelitates & homagia ipsorũ Prælatorum & Magnatum recepimus, vt est moris: Desiderantes igitur pacem nostram pro quiete & tranquillitate populi nostri inuiolabiliter obseruari, Tibi præcipimus, quòd statim visis præsentibus per totam Balliuam tuam pacem nostram facias publicè proclamari, vniuersis & singulis ex parte nostra inhibendo, sub pœna & periculo exhæredationis & amissionis vita & membrorum, ne quis dictam pacem nostram infringere seu violare præsumat, sed quilibet actiones & querelas absque violentia quacunque prosequatur, secundùm leges & consuetudines regni nostri: Nos enim parati*

Tho. Walsingham in hist. pag. 107

sumus,

sumus, & sẽper erimus, õnibus & singulis cõquerẽtibus, tã diuitib⁹ q̃ pauperib⁹ in Curijs nostris plenam iustitiã exhibere. Teste meipso, Calẽdas Februarij, die dominica, in vigilia purificat. &c.

This Writ I haue the rather set downe at large, because it containeth a faire shewe of a foule deede, I meane, his attaining to the crown, by the depriuation of his father. But (for the present purpose) by this Writ it is manifestly declared, that the Peace which he meant, was not an vniting of mindes, but a restraining of hands, which is (in a manner) al one with that which Tullie writeth in his Oration *Pro Sestio*, where he setteth *Vis* and *Ius* one against the other: and it agreeth well with that description of *Vis*, which M. Bracton maketh (*lib. 4. ca 4.*) saying: *Vis est, quotiens quis (quod sibi deberi putat) non per Iudicem reposcit: Est autem interdum armata, interdum inermis.* According to which meaning also, the olde Statute of *Westminster* the first (*ca. 1.*) saide: Let the peace of the lãd be maintained in al points, and common right be done to all, as well poore as rich: Thereupon likewise saith the Statute (1. *R.* 2. *ca.* 2.) Let the peace bee well and surely kepte, that the Kings subiects may safely goe, come, and abide, according to the lawe of the Realme, and that

Iustice and right be indifferently ministred to euery Subiect.

Finally, the Statutes of 2.R.2 ca.4 1.H.4. ca.1. and 7. H.4. ca.1. Doe all (in plaine speech) couple the maintenance of the Peace, with the pursuing of sutes, as things that may right well stand togither. And therefore, I conclude, that this furious gesture, and beastly force of bodie, or hands (and not euerie contention, suite, and disagreement of mindes) is the proper subiect and matter, about which the Office of the Iustices of the Peace is to be exercised.

Iustices of the peace, be meete to pacifie suites.

Howbeit I write not this, as though I would not haue a Iustice of the Peace to occupie himselfe also in pacifying the suites and cõtrouersies, that do arise amongst his neighbours: Yea rather I wish him, to be as well ἐμπορικὸν, as ἐμπορευτὴν, a Compounder, as a Commissioner of the Peace: and I thinke him so much the meeter to steppe in betwixt those that be at variãce, as (by reason of his learning, wisedome, authoritie, & wealth) he is like to preuaile more, by his mediation and intreaty, than another man. But, as it is not al one, to speake of his proper office in Law, & of his common duetie in Charitie: so I thought good to seuer and distinguish them.

Of

Of such as had the *Conſeruation* of the Peace, at the common Lawe.

CHAP. III.

AS the common lawe hath, euen frō the beginning, continued a ſpeciall care for the Conſeruation of this Peace: So did it not want méete Officers (béefore that theſe Wardeins or Iuſtices of the Peace were made) to whoſe charge it did committe the maintainance of the ſame: And for as much as it will giue no ſmall light to the vnderſtanding of the office of the preſent Iuſtices of Peace, to haue that auntient authoritie vnfolded, vppon the which this latter power is (as it were vpon a Stocke) ſet and engraffed, I wil ſpeake ſomewhat thereof, before I beginne wyth the other.

At the Commune lawe therefore, and before ȳ time of King Edward the third, there were ſundrie perſons, that had intereſt in the kéeping of the Peace. Of theſe, ſome had that charge as incident to other Offices that they did beare, and ſo included within the Conſeruators.

the same, that they were neuertheleſſe called by the names of their other Offices onlie: Some others had it simply, as of it selfe, & were therfore named *Custodes pacis*, Wardeins, or Conseruators of the Peace.

By other offices.

Againe of these that had charge ouer the Peace, by the dignitie of their Offices, some had that power ouer all the Realme, & some others had it within certaine limits only: & both these sorts after a diuers maner of dispensatiõ, as in particularitie it shal appeare.

The Queenes Maiestie then is, by hir Office & dignitie royall, the principall Conseruator of the Peace within hir Dominions, and may giue authoritie to others, to see the Peace kept, and to punish such as shal breake the same. But a Duke, Earle, or Baron, bee no Conseruators of the Peace, because those be no titles of Office, but of dignitie onelie, saith Mar.

The Lord Chauncelour or Lord Keeper of the great Seale, the L. Steward of *England*, the L. Marshall and Conestable of *Englande*, and euerie Iustice of the Kings Bench, haue (closed in their offices) a credite for conseruation of the peace ouer al the Realme, and may awarde Precepts, and take Recognisances for the Peace. Mar. & Fitz. And by good opinion, The L. Treasorer of *England* maye well

well be added to the number of these.

The M. of the Rolles also by the opinion of M. Mar is a generall Conseruatour of the Peace by his office. But he maketh Proces & taketh Recognisances thereupon, not as incident to his office, but by prescription.

The Iustices of the Common place, and Barrons of the Escheaquer, bee Conseruatours within speciall places onlie, that is to say, within the precinctes of their seuerall Courtes: So also the Iustices of Assises may awarde a man to prison that breaketh the peace, in their presence, and they may commaunde the keeping of the peace vnder a peine, and that weapons be taken from the Iurors or Witnesses, that appeare before thē, if anie complainte bee thereupon made: But as they bee meerlie Iustices of Assise, they cā neither take Suertie of the peace, nor award anie Proces for it. Mar.

The Iustices of Gaole deliuerie, may take suertie for the Peace of a prisoner before them, that was committed for not finding suertie of the Peace, Mar.

The Coroners (saith Britton. Fo. 3.) bee principal Conseruatours of the peace within their Counties: And euerie Shirife is a Conseruatour of the peace, within his Countie, as Iudge Fineux affirmed 12. H. 7. 17. & after

and after him M. Fitzh. in *Nat. brev. Fo.* 81. where he saith that the Shirife may (vpon request made, & without any Writte sent vnto him) commaunde a man to finde suche Suertie of the Peace by Recognisance.

The Stewarde of the Marshalsey, maye take Suertie of the Peace, by Recognisance also within the Vierge, by prescription: and the Conestable Marshall of the Quéenes house, may sée to the Conseruation of the peace within the same house. Mar.

The Steward of the Shirifes Turne, the Steward in a Leete, or the Stewarde in a Court of Pipowders, can not graunt Suertie of ỳ peace, vnlesse it be by Prescription. But euery of them, may committe him to ward, that shal make an affraie in their presence, whilest they be in execution of their offices, and that is more than the Steward and Suitors in a Court Baron can do. Mar. and the first two of them, may also take presentments of offences against the Peace.

To bée short, euerie Constable, Peticonstable, Tithingman, and Borowhead, be Cõseruatours of the Peace by their offices, within ỳ limits of their Hundreds, Townes, Tithings, and Boroughes. 12. H. 7. 17. Fineux. And by the same reason, our Borsholder in *Kent*, and their Thirdborow in *Warwickeshire*,

shire, be Conseruatours also within theyr Boroughes. For Borowhead, Borsholder, & Tithingman, bee three seuerall names of one selfesame thing, and doe signifie, The chiefe man of the free pledges within that Borow, or Tithing. And where each third Borowe onlie hath a Constable, there the officers of the other two Borowes, be called Thirdeborowes.

These Conestables were ordayned (as it appeareth 3. H. 4. 9. & 10. E. 4. & Fitzh. Fo. 172.) to keepe the peace, and to represse felons, and might take suertie of ỹ Peace (by obligation) if they found any man making an affraie, or otherwise to committe him to prison till he shoulde finde suche Suertie. I haue reade also that a Constable, mighte at the common lawe, haue bayled a suspecte of felonie by Obligation, bicause he was a Cõseruator of the Peace: and that both he and the Shirife lost this authoritie by the Statutes (3. H. 7. ca. 3. & 1. & 2. *Phill. & Mar.* ca. 13.) Which in giuing that power to Iusticces of the Peace, do (in the opinion of some men) take it from the Shirife and Constable: reported by Dalison Iustice.

Hitherto then, of such as had, and yet haue the charge of the Peace conueied vnder their other Offices. Now as touching those that had

Simple Conseruatours.

had the simple Office of Wardeins (or Conseruatours) of the Peace, it is to be vnderstode, that they also were of two diuerse sortes: that is to saye, eyther Ordinarie, or Extraordinarie: and the Ordinarie Conseruators, were eyther by Prescription, Election, or Tenure.

Ordinarie.

By prescription.

A man maye prescribe (saith M. Marowe) that he and his auncestours, or he and they whose estate he hath in the Manor of Dale, haue bene Conseruatours within the Hundred of Sale, either all the yeare, or onlie at one certaine time of the yeare: And as hee may prescribe in the power it selfe, so also may he in ỹ maner of the exercise of ỹ same, as that they haue vsed to take the Suertie of Peace by obligation, pledge, or Caution, & so also in ỹ maner of the Processe therefore, as to Distreigne, and to sell the distresse. Mar.

But all this is to be doubted of, because that in the opinion of Brian and Pigot (21. E. 4. 67. & 22. E. 4. 35.) the Maior of Dale cannot prescribe to be a Conseruatour, or to commaunde Suertie of the Peace, & to commit to prison for an affraie in his presence, vntill such suertie be found.

Furthermore, euen as the Shirifes, were auntientlie chosen, and as the Coroners yet

yet bée: So also certaine persons were wont to be elected Conseruatours of the Peace, in the full Countie before the Shirife, and of this kinde I my selfe haue séene certaine Recordes (*in Rotul: patent. de Anno.* 5. E.1.) running in this course. By Election.

First, a Writte to the Shirife of *Norfolke*, commaunding him to chuse in his ful Coũtie, *vnum hominem de probioribus & potentioribus Comitatus sui, in custodem pacis.*

Then an other Writte directed, *Ballinis & fidelibus* of the same Countie, giuing vnto thẽ notice of the former Writte, to the ende (as it séemeth) that the Bailies should warne the men of the Countie, and that they should appeare at the Countie Court, to make the Election.

And lastlie, to the Conseruatour elected, this Writte following: *Edwardus dei gratia Rex Angliæ, Dominus Hyberniæ, & dux Aquitaniæ, dilecto & fideli suo, Iohanni le Bretun Salutem. Cũ vicecomes noster Norfolc. et cõmunitas eiusdem comitatus elegerit vos in Custodem pacis nostræ ibidem: vobis mandamus, quod ad hoc diligenter intendatis, prout idem vicecomes vobis scirifaciet ex parte nostra, donec aliud inde præceperimus. In cuius rei &c. Datum per manum venerabilis patris. F. Bathon & Wellen. Episcopi, Cancellarij nostri, apud Cest. secundo die*

Septemb. Anno regni nostri quinto.

By Tenure. Touching the Conseruation of ỹ Peace by Tenure of Land: M. Marrow putteth this case: If the King graunt, vnto a man, landes to holde of him by Knightes seruice, and to be a Conseruatour of the Peace in a Countie, he is a Conseruatour by Tenure: agreably whereunto saith an Inquisition, founde at *Chester* (An. 4. E. 2.) after the death of one Vrianus de Sancto Petro (*inter alia*) thus:

Quòd idem Vrianus tenuit de Domino Rege in capite in dominico suo vt de feodo die quo obyt, Medietatem Seriantiæ pacis, per seruitium inueniendi, decem seruientes pacis ad Custodiam pacis in Cestr: pro qua quidē custodia antecessores sui percipere solebant. xxx. ß. per annum ad Scaccarium Cestr: pro Mantellis dictorum decem seruientum. &c.

Extraordinarie Conseruatours. These sortes, and some others (which M. Marrow reciteth, and whiche I, wanting Recordes to warrant them, do omitte) I cal Ordinarie Conseruatours of the Peace, bycause their auctoritie was then Ordinarie, alwayes one, and the same wel ynough knowen: But the Extraordinarie Conseruatour, as he was endowed with an higher power, so was he not ordinarilie appointed, but in the times of greate troubles onlie, much like as the Lieutenaunts of Shires are nowe

now in our dayes.

And he had ẏ charge to defende the coasts and Countrey, both from forraine and inwarde enemies, and might commaund the Shirife and all the Shire, to aide and assiste him, as it may well appeare by this Patent (remayning of Record in the Tower, *Rotul. Patent. de An.* 49. H. 3.) made by that king, or rather in his name, by Simon the Earle of *Leicester*, whose prisoner he then was.

Rex Iohanni de Plesset, salutem: Cùm nuper de consilio Magnatum qui sunt de consilio nostro, constituerimus vos custodem pacis nostræ in comitatu Northumb. ac vos tam laudabiliter & circumspectè in officio illo gesseritis, quod probitatem ac diligentiam vestram merito duximus recommendandam, & adhuc necesse sit (sicut intelleximus) quod ad tuitionem partium illarum & conseruationem pacis nostræ, eidem officio intendatis: vobis (de consilio Magnatum prædictorum) mandamus, firmiter iniungentes, quatenus omnem diligentiam (quam poteritis) adhibeatis ad pacem nostram conseruandam in partibus prædictis, in forma qua vobis aliâs iniũximus. Mãdauimus enim Vic: nostro Northumb. quod (quotiens opus fuerit) & à vobis fuerit requisitus, cum toto posse sui comit: vobis ad hoc assistat. Nolumus autem, quod prætextu huius mãdati nostri, de aliquibus (quæ ad officium vic: per-

tinent)

tinent) vos intromittatis, quo minus vic: de exitibus eiusdem comit. nobis plenè respondere valeat ad Scaccarium nostrum. Teste Rege, apud Westmonast. xj. die Februarij, Anno Regni sui quadragesimo nono.

And sundrie the like Patents were at the same time also made: as to Iohn de la Haye, to be Conseruatour of *Kent*, and of the Sea coastes there: to Ralph Basset of *Drayton*, to be Conseruatour of *Staffordshire*, and so to others for other Counties.

Of the first ordaining of the Wardeins *and* Iustices *of the Peace*, by Statute Lawe.

Cap. iiii.

After suche time as Queene Isabell, contending with hir husband King Edwarde the seconde, was returned ouer ȳ Seas into *England*, accompanied with hir Son Prince Edward (called afterward the thirde King of that name) and with Sir Roger Mortymer

tymer, and such others of the Englishe Nobilitie, as had for ỳ indignation of the King, fledde ouer the Seas vnto hir. She sone after gotte into hir handes the person of the olde King, partlie by the assistaunce of the Heralders, that she brought with hir, and partlie by the aide of such other hir friends, as she found readie here, and immediatelye caused him by forced patience to surrender his Crowne to the yong Prince. And then also, for as muche as it was (not without cause) feared, that some attempte would be made to rescue the imprisoned King, order was taken, that he should be conueyed (secreatelie, and by night watches) from house to house, and from Castle to Castle, to the ende that his fauourers should be ignorant what was become of him. Yea, and then withall, it was ordained by Parliament, in the life time of that deposed King, and in the verie first entrie of his sonnes raigne (1.E.3. ca 15) That in euerie Shire of the Realme, good men and lawfull (whiche were no maintainers of euill, nor Barrettours, in the Countrey) should bee assigned, to keepe the peace: which was as much as to say, that in euerie Shire, the King himselfe should place speciall eyes and watches ouer the common people, that shoulde be both willing & wise

to forsée, and be also enabled with méete auctoritie, to represse all intention of vproare and force, and that euen in the firste séede thereof, and before that it shoulde grow vp to any offer of daunger. So that, for thys cause (as I thinke) the election of the simple Conseruatours or Wardeins of the Peace, was first taken from the people, and trãslated to the assignement of the King.

And whether their auctoritie and power were then also with this alteration anye thing increased, or no, I will not affirme: But I find (3. E.3. *Titul. Coron.* Fitzh. 360.) that an Enditement of murder was founde before one Wardein of the Peace onlie, and that he therevpon wrote his letter (or precept) to the Shirife, to apprehende the person endited, who toke and brought him before the Iustices in Eire, and that they also therevpon proceéded to the arraignemente and triall of him: And the Statute (4. E.3. ca. 2.) taketh order that such as should be endited, or taken by the Wardeins of the Peace, should not be bayled by the Shirife, or other Ministers, vnlesse they were Mainpernable by the Law.

Cõmissiõs, or assignements for the Peace.

Howsoeuer that were, the same King vsed (as I thinke) for the first 33. yeares of his raigne, to make his assignements and com-

commissions to the Wardeins of the Peace, not alwayes seuerallie into eache Shire, but sometimes iointlie to sundrie persons ouer sundrie Shires: for so I find a Comission 2. E. 3. *part* 2. *patent. in dorso*, made to William Roos and three others his companions, to be Wardeins of the Peace, not only in Lincolneshire, but also in three or foure of the other Counties thervnto next adioining.

And this might be warranted after 18. E. 3 (as I suppose) out of the Construction of the word Countie vsed Plurally in the Statute. 18. E. 3. Stat. 2. ca. 2. contrarie to the meaning of the former lawes (made 1. E. 3. ca. 15. & 4. E. 3. ca. 2.) where the same word is read (Euerie Countie) in the Singular number. But the Parliament (34. E. 3. ca. 1) restored the proper sense of those lawes, saying: In euerie Countie of *England*, there shall bee assigned for the safe keeping of the Peace, one Lord, and with him, three or four of the mightiest men in that Countie. And afterwards, speaking of Felonies, &c. it addeth, They shall haue power to heare and determine (at the Kings suite) al manner of felonies or trespasses, done in the same Countie.

Hereof it commeth to passe, that euer sithence eche Coũtie hath her proper Cõmis-

ſioners for the Peace, & that Counties haue not bene conioyned in Commiſſion, as they were ſometimes before. Hereunto alſo may ỹ be referred, which M. Fitzh. (Fol. 171.) hath, ſaying, That before the Statutes whiche ordained Iuſtices of the Peace, the King vſed to make Conſeruatours of the Peace by his commiſsion. in thoſe Counties and places, where he thought beſt, to kæpe his Peace.

The firſt name of *Iuſtices* of the Peace.

But now, at what time theſe Wardeins of the Peace, were firſt named (and mighte truely be tearmed) Iuſtices of the Peace, it is not ſo euident, that I dare determine vpon it. For on the one ſide I knowe, that M. Marrow, taketh it cleare, that they were made Iuſtices by the Statute 18. E. 3. Stat. 2. ca. 2. and on the other ſide I ſæ, that they were not named Iuſtices in anye Statute (that I haue founde) within 17. yeres after: and it is true that to this verie day theyr owne Commiſsion giueth them not anye ſuch Title. There is a ſhewe (I confeſſe) in that Statute (18. E. 3) that they ſhoulde be Iuſtices, becauſe of the power to heare and determine felonies whiche is mentioned there. But if it be well weighed, it will appeare by the Statute it ſelfe, that the Wardeins of the Peace were to haue one Commiſsion by themſelues for the kæping of the Peace,

Peace, & that they and others (onely at times needefull) were to haue an other Commission to heare and determine Felonies: So that, as they were meerlye Commissioners for the Peace, they had none authoritie to determine felonies, and consequently could not (in regarde thereof) be then worthilye called Iustices: and it is plaine (in mine opinion) that the generall power of determining felonies, was first giuen vnto ỹ Wardeins of the Peace (as to themselues) by the Statute 34. E. 3. ca. 1. After which time it is verie true that they were commonlie reputed and called Iustices: for within one yere after ỹ time there is a Commission, which I haue seene (*in dorso patentium parte 2*) that speaketh thus, *Assignauimus etiam vos, & tres vestrum, Iusticiarios nostros &c.* and the Statute (36. E. 3 ca. 12.) taking order for ỹ Quarter Sessions to be holden as well by them, as by the Cõmissioners for Labourers, called both the sortes of them, by the name of Iustices.

I might here disclose, howe, and by what degrees, the auctoritie of these Iustices of the Peace, was frõ time to time enlarged: But I wil reserue that vntill I shall come to the forme of their Commission, where I shall finde, both fitter occasion, and more proper place for it.

By whose auctoritie, and by what meanes, *Iustices* of the Peace be appointed: and of what sortes they bee.

Chap. v.

FRom the King (who is the head of Iustice) ought to flow all auctoritie to the inferiour and subalterne Iustices. And vpō this reason, it seemeth that the said Statutes (18. E. 3. ca. 2. and 34. E. 3. ca. 1.) did ordaine, that the Wardeins of the Peace in each Countie should be assigned by the Kings Commissiō, that it might thereby appeare that they receiued their whole authoritie and power, as it were by his owne hande and deliuerie. Howbeit afterward, partly through such as had *Iura regalia*, within their Counties Palatine, and did thereby make Iustices of the Peace in their owne names, and partely by the meanes of sundrie Abbats and Religious persons, who (labouring by all policie

licie to increase their iurisdictions, and to shoale out themselues from the ordinary gouernement) had obtayned graunts from the Kings of ẏ Realme, ẏ they thē selues might make *Iusticiarios suos ad pacem conseruandam* within their owne liberties, this prerogatiue of making Iustices was in manye places afterward seuered frō the Crowne, to no small detrimente of the royall estate of the same. And therefore, although by the opinion of Iudge Fineux in the Abbat of S. Albans case (20. H. 7. 8.) such a graunt was of no value in lawe, because it was of a Prerogatiue inseparablie annexed to the Crowne, yet King Henrie the eight thought it fit (by a generall resumption in Parliament of all suche liberties) to restore vnto the Crowne hir antient right in this behalfe. And thereuppon (27. H. 8. ca. 24.) it was decréed, that no person whatsoeuer, should haue any power to make Iustices of the Peace, but that they should be made by letters patents vnder the Kings great seale, in the name and by the auctoritie of the King and his heires, Kings of the Realme, in all Shires, Counties Palatine, and other places within his dominions. So that now againe, al Iustices of the Peace at this day (except the Archbishop of *Yorke*, and the Bishops of *Durham*, and *Elie*, & their

their temporall Chauncelours for the time being, whiche are seuerallie by that verie Parliament auctorised to be Iustices of the Peace, within the libertie of *Hexam*, & Byshopricke of *Durham*, and the Ile of *Elie*: and except the Iustices of Peace, within the Countie Palatine of *Lancaster* which also are by prouision in the same Statute to be made vnder the Kings vsual seale of the same Duchie) be ordained by the meane of the greate Seale, and ministerie of the L. Chauncelour, that hath the charge of the same, but yet so, that some of them be made by Letters Patents vpon speciall sute to the Queene, and by hir bill assigned, and other some by Commission of Cõmune Cource that resteth in the dispensation of the L. Chauncelour.

Two sortes of *Iustices* of the peace

They of the firste sorte, be of some called Iudiciall Iustices and Iustices of themselues, for that the Queene can not discharge them at hir will and pleasure, but they are to continue, and to enioy Iurisdiction so far forth as their Patent of graunt doth enable them. Mar. And therefore, if the Queene do graunt vnto a mã to be a Iustice of the Peace during his life within a certaine precinct, without any further wordes: he shall continue such a Iustice during his life, and shall haue al that power that a Wardein or Conseruatour of

By graunt.

the

the Peace had, and perhaps such power also as is gyuen to a Iustice of the Peace by expresse wordes in any Statute: but he shal not haue all that power which is ordinarily giuen to the Commissioners of the Peace by their Commission. Mar The Maiors, and other heade officers of manie Cities & corporate Townes, be Iustices of this kinde at thys daye, by grauntes of the Queene, & hyr progenitors.

Those other Iustices of the Peace, which deriue their power from the Commission, be called Commissioners of the Peace, and doe differ from the other in this point specially, that they be Iustices during onely the Queenes life, and in hir life during only hir owne will and pleasure, as you shall hereafter see at large, By Commission.

These (as I said) bee now at thys day appointed by the discretion of the Lord Chaūcelour but whether the King himselfe did at the firste nominate them (as he did those whiche were made by Graunt) or else did leaue the choice of them to the Lord Chauncelour alone, or to him and others, it hath some shew of question. *Cōmissioners of the peace, appointed by the Lord Chauncelor.*

It is true that in the Parliament holdē at *Canterburie* 12. R. 2. ca. 2. (which happened shortlie after that Michael de la Pole had bene

bene remoued from that place, and after the troublesome Parliamente of the eleauenth yeare of that kings raigne) It was enacted that the Chauncelour, Treasorer, and keeper of the priuie Seale, the Steward of the kings house, the kings Chamberlaine, the Clerke of the Rolles (now called Master of the Rolles) the Iustices of both Benches, the Barons of the Escheaquer, and others that shoulde be called to the naming of the Iustices of the Peace, Shirifes, Eschaetors, Customers, Controllers, and other Officers, should be sworn to doe the same faithfullie, and without affection: But, whether the meaning of that Statute were, that they all should be continually present togither at the nomination of all suche officers, and whether that Statute were made but for that busy time only, it may well be doubted. For againe vppon fault founde (as it shoulde seeme) that the Commissioners of the Peace were made of persons insufficient, and dwelling in forraine Coũties, it was enacted (2. H. 5. Parl. 2. ca. 1.) that from thencefoorth they should be assigned by the aduise of the Chauncelor & of the kings Counsel, which woordes may be taken to sounde as though they hadde bene named before, by the Lord Chauncelor alone: yet may they indifferentlye be extended,

ded, either to adioine the aduise of the kings counsell to the Chauncelour, or the aduise of them both vnto the King him selfe.

This is out of al dout, that 18. H.6.ca.11. did take order, that vpon knowledge giuen to the Chauncelour of England, by any appointed to be a Iustice of Peace, that he had not lands to the value of twentie pound by yeare, the Chauncelor himselfe should put an other sufficiente in his place. And for want of sufficient men hauing lands of that value, learned in the Law, and of good gouernaunce, that the Chauncelour of England, for the time being, shold haue power, by his discreation to put into the Commission other discrete persons learned in the Lawe, thoughe they had not landes to that value. And albeit this credite were here giuen vnto him in these particular cases onlie, yet it may wel be thought, that he had bene before, and shoulde be afterwarde, trusted with the choice of all the Commissioners of the Peace generallie, wherof there is greate presumption also, euen vpon the Statute. 3.E.6.ca.1. that mentioneth, that the nomination of the *Custos Rotulorum* (being a verie speciall Iustice of the Peace) hadde of long time before belonged to the Office of

the

the Chauncelour, till vpon some occasion it was take from him by the Statute of 37. H. 8 ca. 1. and therefore was then restored to him againe.

VVhat manner of men the *Commissioners* of the Peace ought to bee.

Chap. VI.

IN the choice of the Wardeins and Iustices of the Peace, the Statute lawes haue respecte to the manners and abilitie (or liuelihode) of them all, and to the skil and learning of suche as are speciallie selected, and therefore named of the *Quorum*. For, Gardeins of the Peace ought to bee good men and lawfull, no maintainers of euill, nor Barretours in the Countrey, or (as some Bookes haue it) no mainetainers of euill Barretours in the Countrey. 1. E. 3. ca. 15. Men of the beste reputation (*Meultz vailantz*) most substantiall (or of moste valour) shall be assigned keepers of the

of the Peace. 18. E.3.ca.2.&.17.R.2.ca.9.In euerie Countie for safegarde of the Peace shal be assigned one Lord,and with him three or foure of the (*Mieultes vanees*) most valiant men of the Countie,togither with some Sages of the lawes.34.E.3.ca.1.

And after some troubles in the time of K.Richard.2.**it was enacted that** none shalbe made Iustice of the Peace for any gift, brocage,fauour, or affection:nor any which sueth by himselfe or any other, priuilie or openly,to be a Iustice of the Peace, shall bee admitted to that office. 12. R.2.ca.2. **And of some special policie thē also enacted,** ca.10. **of the same Parliamēt,that** no Steward of any Lord should be assigned in the Commission of the Peace. 12.R.2.ca.10. **Yet in ỳ Parliament of the nert yeare** (ca.7.) **it was ordered,that** (notwithstanding that clause of the former Statute) Iustices of the Peace should then bee made of newe in all places,of the most sufficient Knightes,Esquires, and men of law.

Againe, Iustices of the Peace (especially e those of the Quorum) from hencefoorthe shall be made of the most sufficient persons dwelling in the Countie (without taking any others dwelling in forraine Counties) except the Lords, Iustices of both Benches,

Iuſtices of Aſsiſe, the chiefe Baron, the chiefe Stewards of the duchie of *Lancaſter*, the Seriants, and the kings Attorney. 2. H. 5. Parl. 2. ca. 1.

Laſtly, for that contrarie to theſe former Statutes, men of ſmal ſubſtaunce had crept into the Commiſsion, **whoſe pouertie made them both couetous & contemptible, a newe law was publiſhed to this effect following:**

None ſhal be aſsigned Iuſtice of the Peace, if he haue not landes or tenementes to the value of twentie pounds by the yeare: And if any be otherwiſe appointed, he ſhal within a moneth after notice of the Commiſsion (and vnder the paine of twentie pounds, and to be put out of the Commiſsion) giue knowledge of his not hauing ſuch lands or tenements, to the Lord Chauncelour, who ſhall put an other perſon ſufficiente in his place. **And the like paine is,** if he ſit, or make warrant, or anye precepte, by force of the Commiſsion. **But this,** extendeth not to Cities, Boroughes, or Townes that be Coũties of themſelues, or that haue Iuſtices of Peace (dwelling in them) by Commiſsion or graunt of the king: Nor to ſuch Counties where there be not men ſufficient (hauing landes or tenements to the value aforeſaid) learned in the lawe, and of good gouernance:

naunce: for then other discrete persons learned in the Lawe, maye by the Lorde Chauncelour bee putte in the Commission. 18. H. 6. ca. 11.

Now although this portion of twentie pounds a yeare, be not at this day in account aunswerable to the charge and countenance fitte for a Iustice of the Peace, yet who knoweth not, that at the making of this Lawe, it was farre otherwise: And I do not doubt, but as the rate of all things is greatlye risen since that time, so is there also good care taken, that none be nowe placed in ỹ Commission, whose liuings be not increased according to the same proportion.

And thus, our Parliaments (entending to make the Iustice of Peace an able Iudge) doe require that he come furnished with thrée of the principall ornamentes of a Iudge, that is to saye, with Iustice, Wisedome, and Fortitude, for to that summe the wordes, Good, Learned, Valiant, do wel amounte. And aboue all, that he loue & feare God aright, without whiche he can not bée accounted Good at all.

How manie *Commissioners* of the Peace there ought to be in each *Countie.*

Cap. vii.

THE number of the Wardeins of ỳ peace, was not limitted, vntill that the Statute (18. E. 3. ca. 2.) ordained, that there shuld be two or three in each Countie: And bycause it was founde, within a few yeres experience, that this number suffised not for the gouernaunce of the Countrie, therefore by an Acte (made 34. E. 3. ca. 1.) it was further prouided, that in euerie Shire, one Lorde, and with him three (or foure) of the Best in the Countie, and some learned in the Lawes, shoulde be assigned for keeping of the Peace, and to restraine offendors.

In execution of whiche Statute, there was (amongst many other) one Commission for *Kent*, awarded (35. E. 3.) to Robert Herle, Iohn Cobham, Roger Northwood, Ralph Ireningham, Thomas Lodelowe, Rober

bert Vintar, Iohn Barry, and Thomas Hartrege.

But, as it falleth out many times, that euill examples doe followe of good lawes: So here it came to passe, that whilest the Parliament prouided an increase of Officers, to restraine offendors, ambition so multiplied the number of those Iustices, that it was afterwarde high time to make a contrarie lawe to diminish them. And therfore, by the Statutes (12.R.2.ca.10. and 14.R.2.ca.11.) it was prohibited, that there should not bee any moe than fiue Iustices of the Peace in any Commission, besides the two Iustices of Assise, and certaine Lordes that were assigned in the Parliament it selfe. And for the better restrainte of the increase of them in time to come, it was also then further enacted, that no Assotiation shoulde bee made to the Iustices of Peace, after their firste Commission. 12.R.2. ca.10. Which lawe although it bee not abrogated till this day, yet it was lõg since eluded, by making of newe Commissions, that had more new Iustices thrust in to them.

And truelie it seemeth to me, that (togither with the like ambitious desire of bearing rule in some) the growing number of the Statute lawes committed from time to

Verie many Iustices of Peace at this day.

time to the charge of the Iustices of ỹ Peace, hath bene the cause that they also are nowe againe increased to the ouerflowing of each Shire at this day.

Iustices of Peace be ouerladen with Statutes.

For, if Hussey the chiefe Iustice (1.H.7.3) thought that it was ynough to loade all the Iustices of the Peace of those dayes, with the execution, onelie of the Statutes of *Winchester*, & *Westminster*, for Robberies and Felonies, the Statute of Forcible entries, the Statutes of Labourers, Vagabounds, Liueries, Maintenaunce, Embracerie, and Shirifes: Then how many Iustices (thinke you) may now suffise (without breaking their backes) to beare so manie, not loades, but Stacks of Statutes, that haue since that time bene laide vppon them? To dispute, whether it be better to haue manye, or few Iustices of the Peace, in each Shire, (if all putte in were able for the place) is a noble question, & worthie of a higher consideration, and therefore it becommeth not mée to enter into it.

The

The forme of the Commission of the Peace.

CHAP. VIII.

FOr as much as al the auctoritie and power of the Commissioners of the Peace, floweth out of theyr Commission, and the Statutes (as it were out of two principall springs or fountaines) it is nowe time to vnfolde the Commission it selfe, and to see what is contained in it. Two fountaines of the power of Iustices of the Peace.

ELizabetha, Dei gratia, Anglia, Francia, & Hibernia Regina, fidei defensor &c. Prædilecto & fideli, Edmundo Cantuar. Archiepiscopo &c. Necnon prædilectis Thomæ Bromley militi, domino Cãcellario, Willihelmo domino Burghley, Thesauriario &c. salutẽ. SCIATIS, quòd assignauim' vos, coniũctim et diuisim, ad pacem nostrã, ac ad Statuta & ordinationes apud Winton. Northampton, & Westmonasterium, pro conseruatione pacis eiusdem, Necnon ad ordinationes ibidẽ The salutation.

& apud Cantabrigiam de venatoribus, operarijs, artificibus, seruitoribus, hostellarijs, mendicantib⁹ & vagabundis, & alijs hominib⁹ mendicãtib⁹ qui se nominant Trauailing men. Et similiter ad Statuta & ordinationes apud Westmonast. anno regni Henrici quarti nuper Regis Angliæ defuncti, primo & secundo, de liberatis signorum societatis, militibus, armigeris, seu valectis, & alijs liberatis pannorum minimè dandis, nec eis liberatis aliqualiter vtendis : Ac ad quoddam aliud Statutum Henrici quinti nuper Regis &c. in Parliamento apud Westmonasterium &c. De controfactura, lotura, tonsura, & alia falsitura, moneta terræ nostræ similiter editum, iuxta vim, formam, & effectum eorundem, custodiendum, & custodiri faciendum: Ac ad omnia alia ordinationes & Statuta, pro bono pacis nostræ, ac queto regimine & gubernatione populi nostri edita, in omnibus & singulis suis articulis, in Comitatu nostro Kanciæ, tam infra libertates, quàm extra (per quos rei veritas melius sciri poterit) iuxta vim, formam, & effectum eorũdem, custodienda, & custodiri facienda: Et ad omnes illos, quos (cõtra formam ordinationum & Statutorum prædictorum delinquentes inueneritis) castigandos, & puniendos, prout (secundum formam ordinationũ & Statutorum prædictorum) fuerit faciendum: Et ad omnes illos, qui aliquibus de populo nostro (de corporibus suis, vel de incendio domorum suarum)

rum) minas fecerint, ad sufficientem securitatem de pace & bono gestu suo erga nos & populũ nostrum inueniendam, coram vobis venire, & si huiusmodi securitatem inuenire recusauerint, tunc eos in prisonis nostris, quousq; eiusmodi securitatẽ inuenerint, saluos custodiri faciendum.

Assignauimus etiam vos: & quoscunq; vestrũ, Iusticiarios nostros, ad inquirendum per Sacramentum proborum & legalium hominum de comitatu prædicto (per quos rei veritas melius sciri poterit) de omnimodis felonijs, transgressionibus, forstallarijs, regratarijs, & extortionibus in comitatu prædicto per quoscunq; & qualitercunq; factis siue perpetratis, & quæ ex nunc ibidem fieri vel attemptari contigerit: Et etiam de omnibus illis, qui in conuenticulis contra pacem nostram, & in perturbationem populi nostri, seu vi armata ierunt, vel equitauerũt, seu ex modo ire vel equitare presumpserint: Et etiam de hijs qui ad gentem nostram Mayhemandam, vel interficiendam in insidijs iacuerunt, seu ex modo iacere presumpserint. Et etiam de omnibus illis, qui capitijs, & alijs liberatis de vnica secta, per confœderationẽ & pro manutenentia, contra prohibitionem ac formam ordinationum & Statutorum prædictorum inde ante hac tempora factorum, vsi fuerint, & alijs huiusmodi liberatis imposterum vtentibus. Et etiam de hostellarijs, & alijs, qui in abusu mensurarum & ponderum, ac in venditione vi- 2. Clause.

ctualium, ac etiam de quibuscunq; operarijs, mendicantibus, artificibus, seruitoribus, hostellarijs, & vagabundis, ac alijs qui contra formam ordinationum & Statutorum predictorum (pro communi vtilitate regni nostri Anglia, & populi nostri eiusdem, de huiusmodi venatoribus, operarijs, artificibus, seruiteribus, hostellarijs, mendicantibus & vagabundis, ac alijs inde factorũ) deliquerint, vel attemtauerint in comitatu predicto, seu extunc delinquere, vel attemptare presumpserint. Ac etiam de quibuscunq; vicecomitibus, maioribus, Balliuis, Senescallis, Constabularijs, ac custodibus Gaolorum qui (in executione officiorum suorum, erga huiusmodi artifices, seruitores, laboratores, mendicantes, & vagabundos, ac alios predictorum, iuxta formam ordinationum & Statutorum predictorum, faciendorum) indebitè se habuerint, & ex nunc indebitè se habere presumpserint, aut tepidi, remissi, vel negligentes fuerint, aut ex nunc tepidos, remissos, vel negligentes fore contigerit: Et de omnibus & singulis suis Articulis & circumstantijs, ac alijs premissis (contra formam ordinationum & Statutorum predictorum, per quoscunq; & qualitercunq; factis, siue perpetratis, & que ex nunc ibidem fieri vel attemptari contigerit) qualitercunq; concernentibus plenius veritatem. Et ad indictamenta quacunq; (tam coram vobis, seu aliquibus vestrum, aut alijs nuper custodibus pacis & Iusticiarijs

arijs domini Edwardi quarti, & Edwardi quinti nuper Reg: Angliæ, ac R. 3. nuper (de facto, & non de iure) Regis Angliæ, Necnon domini Henrici nuper Regis Angl. 7. Henrici octaui, Edwardi sexti, & Mariæ &c. ad huiusmodi felonias, transgressiones, & malefacta in comitatu prædicto audienda & terminanda assignatis, virtute diuersarum literarum eorundem, Edwardi, Edwardi, Richardi, Henrici, Henrici, Edwardi, Mariæ, vobis aut alijs factarum, facta & nondum terminata, quã coram vobis & sotijs vestris nũc custodibus pacis nostræ, & Iusticiarijs nostris huiusmodi virtute literarum nostrarum facta & nondum terminata) Inspicienda, ac ad procedendũ inde, ac processus (versus omnes alios, quos coram vobis seu aliquibus vestrum indictari contigerit, quousq; capiantur, reddantur, seu vtlagentur) faciendos & continuandos.

Assignauimus etiam vos. 79. 78. 77. &c. quatuor, tres, & duos vestrum (quorum aliquem vestrum, vos, A. B. C. D. &c. vnum esse volumus) Iusticiarios nostros, ad felonias prædictas, ac ea omnia & singula quæ per huiusmodi Hostellarios & alios, qui in abusu mensurarum & ponderum, ac in vendstione victualium, & omnia alia quæ per huiusmodi operarios, artifices, seruitores, laboratores, mendicantes, & vagabundos, qui contra formam ordinationum & Statutorum prædictorum, seu in enernationem eorundem, in aliquo præ- 3. Clause,

sump-

ſumpta, vel attemptata fuerint, vel attemptari contigerint: Ac extortiones & regratarias prædictas, tam ad ſectã noſtram, quàm aliorum quorumcunq; (coram vobis, pro nobis, aut pro ſeipſis) conqueri, aut perſequi volentium, audiendam & terminandum: Necnon tranſgreſſiones, & forſtallarias prædictas, ac omnia alia (ſuperius non declarata) ad determinanda ad ſectam noſtram tantum: Et omnia alia (qua virtute ordinationum & Statutorum prædictorum per cuſtodes pacis noſtræ & Iuſticiarios noſtros huiuſmodi diſcuti & terminari debent) audienda & terminanda: Et ad eoſdem operarios, artifices, & ſeruitores, per fines, redemptiones, & amerciamenta, ac alio modo, pro delictis ſuis, prout (ante ordinationem de punitione corporali huiuſmodi operarijs, artificibus, & ſeruitoribus, pro delictis ſuis exhibenda) factum fieri conſueuit: Nec non eoſdem vicecomites, maiores, Balliuos, Seneſchallos, conſtabularios, ac cuſtodes Gaolarum, venatores, vitellarios, Hoſtellarios, mèndicantes, & vagabundos, ſuper hys (qua contra formam ordinationum & Statutorum prædictorum attemptata fuerint, vel attemptari contigerint) caſtigandos & puniendos, ſecundùm legem & conſuetudinem prædictas, ac formam ordinationũ Statutorũ prædictorum.

Prouiſo ſemper, quod ſi caſus difficultatis ſuper determinatione extortionum huiuſmodi coram vobis venire contigerit, tunc ad Iudicium inde red-

reddendum (nisi in præsentia vnius Iusticiariorũ nostrorum, de vno vel de altero Banco, aut Iusticiariorum nostrorum ad Assisas in comitatu prædicto capiendas assignatorum) coram vobis minimè procedatur. Et ideo vobis, et cuilibet vestrũ mandamus, quod circa custodiam pacis, ordinationum, & Statutorum prædictorũ, diligenter intendatis, Et ad certos dies & loca (quos vos, seu aliqui vestrum, ad hoc prouideritis) diligenter super præmissa faciatis inquisitiones. Et præmissa omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma prædicta, facturi inde quod ad iustitiam pertinet secundùm legem & consuetudinem regni nostri Angliæ: Saluis nobis amerciamẽtis, & alijs, ad nos inde spectantib'.

The charge to the Iustices.

Mandauimus enim vicecomiti nostro Kanciæ, quod ad certos dies & loca (quos vos, seu aliqui vestrum, ei scire faciatis) venire faciat coram vobis, seu aliquibus vestrum, tot & tales probos & legales homines de Balliua sua, tam infra libertates, quàm extra, per quos rei veritas in præmissis melius sciri poterit, & inquiri.

To the Shirife.

Et vos præfati Thom. Wotton, ad dies & loca prædicta, breuia, præcepta, processus, & indictamenta prædicta, coram vobis & dictis socijs vestris, venire faciatis, & ea inspiciatis, & debito fine terminetis, sicut prædictum est. In cuius rei testimonium &c. Datum. 6. die Aug. Anno regni nostri. 21.

To the Custos Rotulorum.

Certaine

Certaine obſeruations, concerning the matter & forme of the *Commiſſion* of the Peace.

Cap. ix.

MAiſter Fitzherberte, in his treatiſe of Iuſtices of the Peace, (Fo. 111. b.) ſeemeth to bee of the opinion, that this forme of Commiſsion was deuiſed, when Iuſtices of the Peace were firſt ordained: But (ſauing the reuerence due to ſo learned a Iudge) I ſuſpect that the matter is miſtaken by him. For, beſides that the Commiſsion it ſelfe doth rehearſe certaine Statutes made in the times of King Henrie the fourth, and of King Henrie the fift (many yeares after that Iuſtices of the Peace were created) It is the agreeing opinion of al the Iuſtices (2 R. 3. 9.) ỹ Iuſtices of the Peace had no power at ỹ firſt but only *ad Conſeruandā pacē Regis*, and that afterward whē they had power giuen thē ouer Felons, it was not ynough for them to ſay (in their Certificate of an Enditement of

Alterations from time to time, of the Commiſsion of the Peace.

of Felonie) that it was founde, *Coram Iusticiarijs Domini Regis, ad pacem in comitatu predicto conseruandam*, but that they must adde withall, *Necnon ad diuersas felonias &c.* and that otherwise their Certificat was of no value. And as it is euidēt, that (34 E.3 ca.1.) was the firste Statute that gaue to them that power to heare and determine felonies and trespasses: So there is a Precedent to be seene (35 E. 3. *in dorso patent. parte.* 2.) wherby it appeareth that the forme of their Commission was then enlarged accordingly.

After that time also, it is apparaunte, that sundrie things were by expresse commaundement of diuerse Statutes put into theyr Commission, of whiche sorte bée these, the Statute (36.E.3.ca.12.) by whiche there ought to be mention in the Commission, of the times of holding the Sessions of the Peace, although the same were afterwardes pretermitted, bycause 2.H.5.ca.4. did alter those times in apointing of others: the Acte (42.E.3. ca.6.) by whiche, auctoritie ouer Labourers was giuen vnto them, and willed to bée putte into their Commission: The Statute (5.H.4.ca 3.) whereby it was commaunded, that mention of *Winchester*, (concerning watch) should be added

added to their Commission: and the Statute (3.H.5.ca.7.) which toke order that Iustices of Peace shoulde haue power by the Kings Commission to enquire of the counterfaiting and other falsifying of money.

Besides all whiche, it is verie probable and likelie, that the mention of Weightes and Measures, of Vagaboundes, of Liueries, and of some other things, was first put into the Commission, after the making of these Statutes (34.E.3.ca.5. &.6:7.R.2.ca.5:17.R.2. ca.4:2.H.4.ca.21.) and some others, whyche did first giue power to the Wardeins and Iustices of the Peace, to deale with those and some other matters. So farre of is it, that this Commission hath from the beginning retained one constant tenour and forme.

Yea, as I am verelie persuaded, that the forme of this Commission hath varied with the time, and receiued sundrie accessions: so I trust hereafter to make it plaine, that it were conuenient to reforme it now also for diuers imperfections that do yet remaine in it: euen as in our memorie, the Statute of Lollards, which was thrust into the Commission by 2.H.5.ca.7 and was (in Maister Fitz.own dayes) vsually read in it, is nowe vpon iust reason, as a thing sauouring of the pumpe (the Pope I woulde say) throwen

throwen cleane out of the booke.

But first, let me breake it (as it is) into partes, and leaue with you a few notes vpon the same.

The whole substaunce of this Commission, is comprehended within these fewe tearmes: The partes of the Commission,

1 The Salutation of the Prince,
2 The power of the Iustices: and
3 The Charge from the Prince, to them, and others.

The Salutation of the Prince erpresseth the names of the Iustices, and hath nothing else in it that needeth light. 1. The Salutation.

Then followeth the Power of the Iustices, whiche is comprehended in three clauses, whereof the first beginneth thus: 2. The power of the Iustices.

Sciatis quòd assignauimus vos, coniunctim, & diuisim, ad pacem &c. custodienda, & custodiri facienda:

The second beginneth in these wordes: *Assignauimus etiam vos, & quoscunq; vestrum, Iusticiarios nostros: ad inquirendum &c.*

The last beginneth likewise: *Assignauimus etiam vos, & duos vestrum, quorum &c. vnum esse volumus, ad felonias &c. audienda & terminanda.*

The first Clause (or *Assignauimus*) giueth power to all, to many, or any one of them, First clause, or *Assignauimus.*

(for so Maister Fitzherb. vnderstandeth the wordes, *coniunctim & diuisim*) to kéepe, and cause to be kepte, the Peace, and especially to kéepe these Statutes made for the maintenaunce of the same, that is to say, first the Statute of *Winchester*, 13 E.1. The the Statute of *Northampton*. 2. E.3. ca. 3. And the Statute of *Westminster*. 5. E.3 ca.14. whyche doeth concerne the Peace, and not (as Maister Fitzh. wil haue it) the Statutes of *Westminster*, the first, second, or thirde, whiche as they haue almoste nothing concerning the matter of Peace, (that of W.1.ca.9. onely excepted) so to go from the Statute of *Northāpton* to them, were to ascende, contrary to the course of the Commission, whiche descendeth by degrées of age and time, from elder to latter lawes and Statutes: and for my Warrant herein, I vouche the Recorde (20. E.3 *in dorso patent. parte 2. membrana. 7.*) where in a Commission of the Peace to Adam of *Scarborowe*, and others, they are charged to putte in execution the Statutes, of *Winchester*, *Northampton*, and *Westminster*, made the fift yeare of that King. After this, the Statute of *Cambridge*, whiche worde in déede (as Maister Fitzh. thinketh) is mistaken for *Canterburie*, and was made there, 12. R.2.ca. 7.8.

7.8.&.10.concerning Artificers, Labourers, Seruauntes, and Vagabounde: for of Hunters it hath no worde, whatsoeuer the Commission say of *Venatoribus*, whiche should be *Viatoribus* as I thinke: the Statute (1.H.4. ca.7:& 2.H.4.ca.21) of Liueries and Badges: and the Statute (3.H.5.ca.6.&.7.) of Counterfayting, Clipping, and Washing money.

The same Clause also giueth them power to kéepe, and cause to be kepte, al other Statutes, made, *pro bono pacis, & quieto regimine populi*: by whiche wordes, the Commission meaneth (as I thinke) all Statutes for Armor, for that tendeth to the kéeping of the Peace, as the Statute of *Winchester* it selfe confesseth: All Statutes for arresting of Robbers, Murderers, Felons, Royotters, and Suspected Persons; whiche are euerie where saide to be againste the Peace: All Statutes concerning the duties of Shirifes, Bailifes, Conestables &c. without whiche the Peace can not be kepte, as the Statute of *Northampton* (2.E.3 ca.4.) plainelie affirmeth: and al Statutes made for the repressing or punishment of Force, Violence, and Fighting.

This first Clause (or *Assignauimus*) is closed vp with a declaration of the meane, by which they shall cause the Peace and these Statutes to be kepte: that is to saye, by chastising the offendors, either according to the orders of the saide Statutes, or by taking suertie of them for their keeping of the Peace, or for their good abearing, or by imprisonment vntil they wil be so bound.

Imperfections in the Commissiō.

But here, before I conclude this Clause, I must admonish the reader, that these statutes of Labourers, Seruants, Artificers, and Vagabounde, be repealed by new Actes of our time prouided in that behalfe, and that therefore they are vainely rehearsed in the Commissiō at this day. It seemeth also that the Statute. (3. H. 5. ca. 6.) for the washing, clipping, and fyling of money, ought to haue no place in the Commission of the Peace at this day: for, those special Treasons be repealed by the generall wordes of 1. Mariæ, & although the same offences be made Treason againe by 5. Eliza. ca. 11. yet that newe Statute giueth no power therein to the Iustices of the Peace. But yet, as concerning the counterfayting of false money, the Iustices of Peace haue still in mine opinion power, to enquire by vertue of that Statute (3. H. 5. ca. 7.) and by this Commission, bycause that

that

that Treason was declared by the Statute. 25. E. 3. and therefore it is not now repealed by 1. Mariæ, as the others were.

And these (as also ỹ mistaking of *Cābridge*, for *Cāterburie*, & the inserting of ỹ words (*per quos rei veritas &c.*) in thys first clause wout any sense, & the stil calling of thē that be the Commissioners, *Custodes pacis* according to the old name, omitting throughe the whole course of the Cōmissiō, to giue vnto thē once the name of Iustices of the Peace, although in all Statutes since 36. E. 3. they be so called) bee some of the imperfections that I meant, when I thought it meete to haue the Commission reformed.

Neither may I wel ouerpasse, that by these wordes (*Et ad omnes illos quos contra formam Statutorum prædictorū &c. delinquentes inueneritis, puniendos, prout secundùm formam Statutorum prædictorum fuerit faciendū. &c.*) in this first *Assignauimus*, greater power seemeth to be giuen by the letter of the Commissiō, than is ment by the Author of the Commission: for, by these wordes, it seemeth that one Iustice of the Peace may punish the Treason of counterfaiting, whiche I thinke is more thā is thought meete to be put into his hāds. And in the Commissions next folowing the Statute it selfe of 3. H. 7. euen for that rea-

son was placed in the last *Assignauimus* of those Commissions.

2. Clause, or *Assignauimus.*

The second Clause (or *Assignauimus*) first enableth all, or anie two, of these Iustices (for so M. Fitzh. taketh the words, *Vos, & quoscunq; vestrum*) to enquire of al Felonies, and Trespasses, and of all offences done against those Statutes, that are contained within the same clause: and to enquire of all Shirifes, and other inferiour Officers, that be remisse in the execution of the saide laws & statutes committed to their charge.

Then it authorizeth them, or any two of them, to proceede, and to make processe vpō al auntient & present Enditements, vntil the parties shal either be takē, or shal yēld thē-selues, or be outlawed for their contumacie. Here also, ỹ form of this Cōmision desireth help, in that there is reference made to those Statutes of Artificers, Labourers, and Vagaboūds which be repealed as I told you. And also mētiō made of Inditemēts takē to long ago, to make any processe out vpon them at this day.

3. Clause, or *Assignauimus.*

But for as much as it auailed little to the correction of offendors, to haue their faults brought to light by Enquirie, vnlesse Iudgement & Execution had bene also giuē & done vpon the same with some conuenient spēde, therefore the thirde Clause (or *Assig-*

nauimus) in the Commission was added, which giueth power to the Iustices of the Peace, or to two of them (whereof the one muste be one of the select number of them, now commōly called of the *Quorum*, bicause the Cōmissiō in making ỹ choise beginneth with that word) to heare & determine al the offences cōprehended within the same, & to chastise the offendors according to the lawes & customes of the Realme & according to the Statutes in that behalfe made & ordeyned. But yet so, that if any question (or difficultie) do arise concerning Extortions, thē they should not proceede to Iudgement thereupon, without the aduise of one of the Iustices, of the one Bench, or of the other or (who be their Commune Oracle for aunswere in Law) of the Iustices of Assise. By the equitie of whiche Prouisoe, M. Fitzh. (Fo. 7.) thinketh, that they are likewise restrayned in all cases of doubt whatsoeuer: howbeit he graunteth, that if they do proceede of thē selues, their Iudgement standeth good, vntil it be reuersed by Error. These of the *Quorum*, were wont not without iust cause to be chosen, specially for their learning in the lawes of the Realme, and therefore there is no separatiō mētioned, til the Commissiō come to giue thē power to heare and determine,

Decision of difficulties, or questiōs, arising before Iustices of the peace.

in which part that kinde of learning is most requisite and seruiceable. And this was the reason ẏ led the makers of ẏ Statuts. 18.E. 3.ca.2.34.E.3.ca.1. & 13.R.2.ca.7 to cause it to be expressly enacted, ẏ some lerned in ẏ laws should be put into the Commission: and all Statutes, that desire the presence of one of the *Quorum*, do secretly signifie such a learned man. But here againe the Commission (*chorda que semper oberrat eadem*) doth make muche relation to the saide Statutes that are not now at all.

3. The charge to them, the Shirife, and *Custos Rotulorum.*

The power giuen to these Iustices hathe appeared. Now let vs sée the charge giuẽ to them and others. They therefore and euery of them be charged to be diligentlye intendant aboute the execution of the premisses, by these wordes, *Et ideo vobis &c.* but howe negligentlie many of them performe it, I am afraide it is too manifeste, whyleſt ambitiouslie seeking the name and power to rule, they take smal care of doing their duetiful seruice that belõgeth therunto. In this clause is contained a sauing vnto the prince of all amercements & other things that shal growe due vnto hir by reason of their procéedings therevpon: of which I will speake somewhat hereafter in place conuenient.

The Shirife is saide to haue bene charged afore-

aforehand to be attendant in the Returne of Iuries before them, in these words, *Mandavimus enim Vicecomiti, &c.* And the *Custos Rotulorum* (for it is meant of him, although he be not so there called) is charged to bring the Records & Processe of the Peace, and in due sorte to consider and directe the same, by these words: *Et vos prædicta Thom. Wootton, &c.* Of whose office and authoritie somewhat shall be sayd also in particular in the second Booke of this treatise.

Of the two *Othes* ministred to the *Iustices* of the Peace.

Chap. x.

SUch as occupie Iudicial places, ought to take héede what they doe, knowing (as Iehosaphat saide) that they exercise not the iudgements of Men onelie, but of God himselfe, whose power, as they doe participate: So he also is présent on the Bench with

The causes why Iustices be sworne.

with them. And therefore, it hath beene alwayes the policie of Christian lawes, to appoint meete formes of Religious attestations (or Othes) for such Officers to take: meaning thereby, not onlie to set God continually before their eyes (whome by suche Othe, they take to witnesse of their promise, & call for reuēge of their falshood:) but also to threatē them (as it were) with temporall paines prouided against corrupt dealings, & withall, to strengthen their minds, and arme their courages, againste the force of humaine affections, whiche otherwise might allure & draw them out of the way.

Upon this ground, the Statute (13. R. 2. Stat. 1. ca. 7.) which willed, that Iustices of the Peace should be made of new in all the Counties of *England*, did therewithall take order, that they should be sworne, to keepe and put in execution, all the Statutes touching their office: whiche albeit that it be the firste Othe that I find to haue beene ministred to Iustices of the Peace, yet I think they were not vnsworne before, nor at any time after, as may be collected vppon the bookes 21. E. 4. 67. & 12. E. 4. 18. and I beleeue also, that that manner of Othe was deuised but for that time onelie, and continued not long in that forme, as being of it selfe very

very generall, and hard to be obserued. And that (happily) was the cause, that it appeareth to be changed to that forme, which M. Fitzh. in his Booke hath left vs, and which (with the alteration of a fewe wordes onelie) is yet at this day put in vse.

For, vpon the renuing of the Commission of the Peace (which nowe a dayes happeneth as often as any person is newly brought into the same) there commeth of course a Writ of *Dedimus potestatem*, directed out of the Chauncerie to some auntient Iustice of the Peace, to take the Othe of him whose name is newly inserted, and to certifie the same into that Courte at suche daye as the Writ commaundeth. This Writ is at this daye accompanyed wyth two Scedules, whereof the one containeth the Othe of the Office of a Iustice of the Peace, in this forme:

Ye shal sweare, that as Iustice of the peace in the Countie of *Kent*, in all Articles in the Queenes Commission to you directed, yee shal doe egall right to the poore, and to the rich, after your cunning, wit, and power, and after the lawes and customes of the Realme, and Statutes thereof made: And yee shall not bee of counsell wyth anie quarrell hanging before you: And that ye

hold

hold your Seſsions after the forme of Statutes thereof made: And the iſſues, fines, & amercements, that ſhal happen to be made, and al forfaitures which ſhal fal before you, ye ſhal cauſe to be entred without anie cō-cealement or embeaſeling, and truely ſende them to the Queenes Eſcheaquer. Yee ſhal not *Let* for gift, or other cauſe, but wel and truly yee ſhal do your office of Iuſtice of the Peace in that behalfe, and that you take nothing for your Office of Iuſtice of the Peace to bee done, but of the Queene, and fees accuſtomed, and coſtes limited by the Statute: and yee ſhal not direct nor cauſe to bee directed, anie warrante (by you to bee made) to the parties, but yee ſhall direct them to the Bayliffes of the ſaid Countie, or other the Queenes officers or miniſters, or other indifferent perſons, to do execution thereof: So help you God, *and by the contents of this Booke.*

Surceaſe, in the printed Booke.

And his Saincts, in the Printed Booke.

The variance betweene this and that elder forme ſtandeth (as you may ſee by the Margent) in three points: whereof, twaine be of no waight at all, but the third did need amendment. For, right godlie and wel did thoſe 32. perſons (that were put in truſte to pen Eccleſiaſticall lawes) purpoſe to make this lawe, amongſt others:

Legiti-

Legitimum autem iuramentum, ijs verbis, & nullis alijs, ſuſcipi volumus: Ita me Deus, per Dominum noſtrum Ieſum Chriſtum adiuuet.

This Othe of the Office conſiſteth of fiue Articles, which (for memories ſake) I haue ſeene expreſſed in theſe 6. Verſes folowing:

Do equall right to rich & poore, as wit & lawe extends: 1
Giue none aduiſe in anie cauſe, that you before depends: 2
Your Seſſions hold, as Statutes bid: The forfeites that befall, 3.4
See entred well, and then eſtreate them to the Cheaquer all:
Receiue no fee, but that is giuē by Queene, good vſe, or right: 5
Ne ſend precept to partie ſelfe, but to indifferent wight. 6

The other Scedule comprehendeth that forme of Othe, which (after the ſeconde abolishment of the vſurped authoritie of the Romiſh Pharao, by the ioyous entrie of our gratious Queene Elizabeth) was in the firſt Parliament of hir raigne (ca. 1.) appointed for Iuſtices of Peace (amongeſt others) to take, before that they ſhould exerciſe the office: and it hath theſe wordes:

The *Othe* of Supremacie.

I William Lambarde, do vtterly teſtifie, and declare in my conſcience, that the Queenes Highneſſe is the onely ſupreame Gouernour of this Realme, and of all other hir Highneſſe Dominions and Countries, as well in all ſpirituall and eccleſiaſticall things (or cauſes) as temporall, and that no forraine Prince, Perſon, Prelate, State, or Potentate, hath, or ought to haue, any iuriſdiction,

ction, power, superioritie, preheminence, or authoritie, ecclesiasticall or spirituall, within this realme: And therefore I do vtterly renounce and forsake al forraine iurisdiction, powers, superiorities, and authorities, and doe promise, that from hencefoorth I shall beare faith and true alleageaunce to the Queenes Highnesse, hir heires and lawfull successors, and (to my power) shal assist and defende all iurisdiction, priuiledge, preheminence, and authoritie graunted or belonging to the Queenes Highnesse, hir heires and successors, and vnited and annexed to the Imperiall Crowne of the Realme: *So help me God, &c.*

There hath bene care taken, once, or twice (in our memorie) to exact this latter Othe of all the Iustices of Peace throughout ỹ Realme, wherof some good hath ensued: But yet many a Iustice there is, that by indirect practise neuer toke, neyther thys, nor the former, whereof what harmes doe, and may grow, I leaue to wiser and higher men to be considered.

Of

Of the power absolute, and limited, that the *Iustices* of the Peace haue.

CHAP. XI.

THe power of the Iustices of Peace, is in some cases Limited, & (in other some cases) Absolute: By which latter word, I do not meane absolute Simply, but after a Manner: For, they may neither hang a man for a grieuous Trespas, nor fine him for a Felonie: and therefore this absolute authoritie is to our Law better knowen by the name of Discretion, because the Iustice of Peace may exercise sometimes *Legis actionem*, and sometimes *Iudicis officium*, or (which is all one) *Iudicium & Decretum*, as the case shall offer, and the law suffer him. Discretion.

It is a good Counsell (which Aristotle giueth in his Rhetorikes *ad Theodectem*) that in the making of lawes, *Quoad eius fieri possit, quam plurima legibus ipsis definiantur, quàm pauciss-*

paucissima verò Iudicis arbitrio relinquantur: and the Commission of the Peace (following that aduise) doth leaue little (or nothing) to the discreation of the Iustices of the Peace, but bindeth them faste with the chaines of the Lawes, customes, ordinances, and Statutes. Howbeit, our latter lawes of Parliament, although they also endeuour (for the most parte) to hold the same course, yet forasmuche as euerie considerable circumstance can not be foreseene at the time of the making of the Lawe, they doe many times leaue to be supplied by the discretion of the Executioner of the Lawe, that thing which was not conueniently comprehended before hand, by the wisedom of the maker of ỹ Law. And therefore, although Discretion be necessary in ỹ execution of euery law (be it neuer so certainely set forth, and bounded in it selfe) yet (in the mouth & language of our Lawe) that onelie and properly is said to be done by Discretion, which is not specially limited with all the circumstances, but is indifferently referred to the consideration of the Iustice that is putte in trust with it.

And truely it is to be wished, that Iustices of the Peace would not by colour of this reference to their Discretion in some fewe cases,

cases arrogate vnto themselues authoritie to vse their discretion, & to play (as it were) the Chauncelours, in euery cause that commeth before them. For no way better shall th: Discretion of a Iustice of the Peace appeare, thã if he (remembring that he is *Lex loquens*) do containe himselfe within the lists of law, and (being soberly wise) do not vse his owne Discretion, but onely where both the law permitteth, and the present case requireth it. Right well saide Cicero: *Est sapientis Iudicis cogitare, tantum sibi esse permissum, quantum sit commissum ac creditum.*

Of the *Iurisdiction*, and *Coertion*, belonging to the *Iustices* of Peace.

CHAP. XII.

AS Iustice can not bee administred without both a Declaration of the Law, and an Execution of the same: So, to the ende that our Iustices of the Peace may be able to deliuer Iustice, they are accomplished

with double power, the one of Iurisdiction, and the other of Coertion, the which other men doe call *Vocationem & Prehensionem*, that is to say, Authoritie, not onelie to conuent the persons, but also (after the cause heard and adiudged) to constraine them to obey their order and decree.

Iurisdictiō. This Iurisdiction of theirs is exercised, for the most part (if not altogither) aboute those causes which be in a maner the same that the Ciuil Lawyers do call, *Iudicia publica*, partely, because the Prince (who representeth the head of the common wealth) hath interest in the most of them, as wel as that priuate persō which is immediatly offended, and partely, because they are not commonly tryed by suche Action as other Ciuil and Priuate causes are, but rather by Criminall and Publique Accusation, Information, or Presentment.

And herein the Iustice of the Peace is by the one halfe superiour to the antient Conseruatour of the Peace, who had onlie Coertion in a fewe cases, and no Iurisdiction in any case that I remember.

But if the authoritie of these Iustices should cease, when the fault is told, heard, and adiudged, then should they be no better than halfe Iustices: and therefore the Law hath

hath also put Cohertion, Execution, (or punishment) (as I said) into their hands, least otherwise their iudgements should be deluded for want of power to bring thē to effect.

This Punishment then, is an orderly execution of a lawfull iudgement, layed vpon an offendour, by the minister of the Lawe: and it is done for foure causes: first, for the amendment of the offendor. Secondly, for examples sake, that others may thereby bee kept from offēding. Thirdly, for the maintainance of the authoritie and credite of the person that is offended: & these three reasons be common to all such punishments. Seneca rehearseth the fourth finall cause, that is to say, that (wicked men being take away) the good may liue in better securitie: and this pertaineth not to all, but to Capitall punishments onelie, as euerie man may at the first hearing vnderstande.

Cohertion, or punishement, for what causes it is appointed.

The Romanes vsed specially, eight sortes of chastisements, knowen to them by these names, *Damnum, Vincula, Verbera, Talio, Ignominia, Exilium, Seruitus, Mors*, that is, losse of goods, imprisonment, stripes, retaliation, reproch, banishment, seruitude, & death: All which our lawe (before the Conquest) was wont to inflict, albeit that now, Seruitude, Retaliation, and Banishment, be out of vse.

The sorts of punishment.

The punishments that be commonly put in execution at this day, and wherewith the Iustices of the Peace haue to do, may be diuided into Corporall & Pecuniarie.

Corporall.

Corporall punishment, is eyther Capitall, or not Capitall. Capitall (or deadly) punishment, is done sundrie wayes, as by hanging, burning, boyling, or pressing: not Capitall, is of diuers sortes also, as cutting off the hand or eare, burning (or marking) the hand or face, boaring through the eare, whipping, imprisoning, stocking, setting on the Pillory, or Cucking stole, which in olde time was called the Tumbrell. Of this kinde of punishment, our olde lawe (making pretious estimatiõ of the liues of men) had moe sortes than we now haue, as pulling out the tongue for false rumours, cutting off the nose for adulterie, taking away the priuie partes for counterfaiting of money, &c.

Pecuniarie.

Under the name of Pecuniarie punishement, I cõprehend al Issues, Fines, amerciaments & Forfetures of offices, goods, or lãds.

Infamous.

And if the Iustices of Peace may by vertue of their Commission deale with suche Conspiratours, as do confederate togither, to cause any person vniustly to be indited of Felonie, whereof afterward he is acquited as

as some do think they may, thē is ther a speciall punishment in that case appointed by lawe, which in 24.E.3.73. is tearmed Vilanous, and may be well called Infamous, because the iudgement in suche case shall be like vnto the auntient iudgement in Attaint, as it is saide 4.H.5. Fitzh. Iudgement 220. and is in 27.lib. Ass.P.59. set downe to be, that their othes shall not be of any credite after, nor lawfull for them in person to approch the Quēenes courts, & that their lands and goods be seazed into the Quēenes hands, their trēes rooted vp, and they imprisoned, &c. And at this day ỹ punishmēt appointed for Periury (hauing somwhat more in it than Corporall or Pecuniarie paine) stretching to the discrediting of the testimonie of the offendor for euer after, may bee partaker of this name.

That *Iustices* of the Peace, bee *Iudges* of *Records*.

Cap. xiii.

IT maketh not a little, both for maintenance of the Peace, and for the credite of the Iustices thereof, that they are numbred amongst the Iudges of Records.

for, on the one side euil doers wil be afraid, when they shall see Memorialles of their wickednesse before their eies, and on the other side, the procedings of those Iustices shall be so much the more reuerenced & set by, as it shall appeare that their endeuours are countenaunced with the fauour of authoritie. And therefore let vs see what is meant by the word Recorde.

Recorde what it is.

The Latine men vse *Recordor*, when they will signifie, to keepe in minde, or to remẽber, in which sense the Poet saide,

Si rite audita recordor:

And after the same sense also doeth oure Lawe vse it. For, Records be nothing else but Memorialles, or Monuments of things done before Iudges that haue credite in that behalfe. And therefore, where King E.1. doth in the beginning of the Booke (called Britton) set forth the Iudges of his Courtes, he saith of some, that they shall haue authoritie of Record, and of others, that they shall beare Record, all which do meane but one thing, namely, that they shall be trusted in the reporte of causes happening before thẽ: and we yet say in common speeche, Suche a man shall beare record of a thing, when we intend to say, that he remembreth it, and can beare witnesse of it. So that in the vse

of

of the word there is (in maner) no differẽce, and therefore let vs examine the matter.

One man may affyrme a thing, and another may deny it, but if a Record once saye the worde, no man shall be receiued to Auerre (or speake) against it. For (saith M. Bracton Fol. 156. writing of a speciall case, where the Shirife in his Countie hath Record) If men shoulde bee admitted to deny the enrolled actes of the Court, then would there neuer bee any ende of controuersies. And therefore, to auoide all contention that may arise, whilest one saith one thing, and one other saith an other thing, the Lawe reposeth it self wholy and solely in the report of the Iudge: and hereof it commeth, that he can not make any Substitute or Deputie in his office (as M. Bracton and Britton bothe, do affyrme) seeing that he may not put ouer the confidence that is put in him.

This Record or Testimonie, is first contained within the brest of the Iudge (as our Law speaketh) & afterward committed to ỹ Rolles, which are therfore figuratiuely called Records also. For you may see 7. H. 6. 28. in Hildebrands case, 19. H. 6. 9. and elsewhere, that during all the time of that Terme, in which any thing passeth before the Iustices at *Westminster*, the Record ther-

The Rolles be *Records*.

of is in *Scrinio pectoris*, in their owne harts, or breasts, so ỹ they may at their own pleasure correct or amend it: But that after the Terme ended, it is only in their Rolles, ouer ỹ which they haue no cõtrolment. And this agreeth right well with that which Britton Fol. 3. affirmeth, saying in the Kings person thus: And albeit that we haue grãted to our Iustices to beare Record of the pleas pleded before thẽ, yet by this we will not that their record shalbe any warãt in their own wrõg, nor that they may raze or amẽd their Roll, nor make Record against their enrolment.

Thus much generally of al Iudges of Record. Now touching our Iustice of ỹ Peace, it is ỹ opinion of the Court (9 E. 4 3 and 14. H. 8. 16.) and of diuerse other Bookes in our lawe, that euerie one of them by himselfe is a Iudge of Recorde. For (as you haue heard) he is made by the great Seale a matter of Recorde, and hath Iudiciall power giuen vnto him, euen by the first *Assignamus* of ỹ Commission. He hath also a Seale of his Office, by the opinion of Brudnell. 14. H. 8. 16 & if he make any Warrãt, although it be beyonde his auctoritie, yet it is not disputable by a Conestable, or other inferiour Minister, but must be obeyed. And he may take a Recognisance for the Peace, as appeareth

peareth 7.H.4.34 & common experience teleth it, which none cã do, but a Iudge of Recorde, bicause the acknowledging of ỹ sum, is to remaine as a matter of Recorde. Yea by good opinion 2. H.7.1. A *Superſedeas* of the Peace made by one Iuſtice of Peace, vnder his ſeale, being brought into the Seſſions, is a ſufficient Recorde to proue that there is a Recogniſance of Peace taken by the ſame Iuſtice, and warrant ynoughe to call the partie bounde therevppon, and if he make default to Recorde the ſame. Moreouer his Recorde or teſtimonie is made in ſome caſe of greater force and value than an Enditement by the oath of twelue men, for his Record (as ſhall appeare hereafter in place conuenient) ſhal conclude the partie ſo, that he ſhal not be admitted to Trauerſe or gainſay it by 21.H.6.5. Fitzh. Fol.18.6 & vpon the ſtatute 15.R.2.ca.2. 11.H.7.ca.15. & 33.H.8.c.6.

Greate cauſe hathe the Iuſtice of Peace therefore, to take diligente hæde, that he abuſe not this credite, either to ỹ oppreſſing of any ſubiect, by making an vntrue Recorde, or to the defrauding of the Prince, by ſuppreſſing anye true Record. Much more reaſon is there to holde, that two Iuſtices of Peace, or more, ſitting in the execution of their authoritie in open Seſsions, muſt needs

be taken to be Iudges of Recorde.

Howe long time the auctoritie of the *Commissioners* of the Peace is to indure: and by what meanes it may be suspended, or determined.

CHAP. XIIII.

WE haue alreadie touched, that the power of the Commissioners of the Peace, is not perpetuall, but nowe the place serueth to handle it at full. The Commissioners of the Peace, are to continue during only the pleasure of the Prince, by whose pleasure they were at the first appointed: and therefore, by the determination of that pleasure, their auctoritie ceaseth also. Besids the which, there are other means to determine their Auctoritie, as namely the Accession of an other office, the Presence of a higher power, and in some speciall case the wante of Adiournement of their Commission.

By expresse word.

The pleasure of the Prince may bee determined either by expresse word, or by implication,

plication, or by death.

The Queenes Maiestie therefore, may discharge the Commissioners of the Peace by hir expresse Writte, vnder the gret Seale. L.5.E.4.32. If she sende a *Supersedeas* to al the Commissioners of the Peace, that will suspende all their auctoritie. But yet so, as it may be reuiued by a *Procedendo*, and therefore it doth not vtterlie determine their auctoritie, as may be gathered by 12.lib. Ass. Pl.21.

By implycation of a new Commission.

Againe, when the Queenes Maiestie maketh other Commissioners of the same kinde within the same Limites, it is implied thereby, that the former Commissioners shall haue no longer power, although there be neuer a worde spoken of the discharge of thē, for the repugnācie. 3 Mar. Regi. Brooke. *Tit.* Commission. 24. But yet if there be Iustices of the Peace by Commission in a whole Countie, and afterward the Queene maketh another man Iustice of the Peace, in one Towne of the saide Countie, onelie Chocke was of opinion. 10.E.4.7. that the power of the first Commissioners continued still in that Towne, bycause that is not altogither contrariant. And Iudge Fineux helde so also (20.H.7.8.) that if the Queene make a proper Iustice of the Peace within

General and proper Iustices.

a

a speciall Libertie, yet maye the generall Iustices of the Peace of ỳ Shire medle there also, vnlesse there be wordes of Prohibition in the Patent, as, *q̃ nulli alij Iusticiarij nostri se intromittãt &c.* If the antient Cõmission of the Peace were to foure persõs, & afterward the Queene should make one man a full Iustice of ỳ peace through ỳ same limit, during his life, then shoulde the handes of the foure Commissioners be closed, saith Marrow.

And a newe Commission *pro hac vice tãtum* will determine the olde: So also, a new Cõmissiõ to heare and determine Felonies, determineth the olde Commission of the Peace concerning Felonies, but not concerning the Peace: And a new Commission of the Peace, *ad inquirendum tantum*, is a determination of the old Commission, *ad audiendum & terminandum*, by Mar.

But it is plain by ỳ preamble of ỳ statute 2. & 3. Phil. & Mar. ca. 18 ỳ the law was takẽ, ỳ if a Cõmission of ỳ Peace was first grãted to certain mẽ a towne, & after another Cõmission had bin granted to other within the whole shire, that this had bene a *Supersedeas* to the Cõmissioners within the said towne.

Howbeit this determination of the olde Commission (that we speake of) groweth not immediately by the making of a newe Com-

Cõmiſsion but either after ỹ reading or proclayming of the new Cõmiſsion at the Seſſions of the Peace, or at the full Countie, or elſe by holding of ſome Seſsion by vertue of the new Commiſsion (in al which caſes the old Commiſsioners muſt take notice of the new Commiſsion) or els after the giuing of notice of the new Commiſsion vnto the old Commiſsioners: for otherwiſe al the meane actes of the olde Commiſsioners be good in Law. Mar. &. 21. H. 6. 29. &. 34 lib. Aſsi. Pl. 28.

And for as much as ſome Cities & Corporate townes found thẽ ſelues grẽued with ỹ Law ſtãding, as hath bin remẽbred, it was ſpecially ordained by the ſaid Statute (2. & 3. Phi. & Mar. ca. 18.) ỹ a Commiſsion of the Peace and Gaole deliuerie made to a Citie or corporate towne (not being a Countie by it ſelfe) ſhould not be determined by the making of ſuch an other Commiſsion after to any of the Shire, Lath, Rape, or Wapentake, in the which, that Citie or towne ſtandeth.

Finally, it is to be noted, ỹ in al caſes wher an auntient Commiſsion of the peace is determined by a new, yet no Proceſſe, or Suite (hanging before ỹ old Commiſsioners) ſhall be diſcontinued therby by the Statute. 11. H. 6. ca. 6 &. 1. E. 6. ca. 7.

By ỹ death or demiſe of ỹ Prince alſo dieth the By death.

the power of all the Commissioners of the Peace made by him: for he maketh the̅ *Iusticiarios suos*, so that he being once deade, or hauing giuen ouer his Crowne, they are no more his Iustices, and the Iustices of the nert Prince they shal not be, vnlesse he will make them his. 4.E.4.44. &.1.E.5.1.

Accession of a new office or calling.

It seemeth, that some toke the Lawe to bee, that if a Iustice of the Peace were created a Duke, Marquesse, Earle, Vicount, or Baron, or elected an Archbishop, or Bishop, or made a Knight, or Iustice of any of the two Benches, or Serieant at the lawe, that then his Office of the Peace was determined therby, bycause it could not be thought, that (his name being changed) he should remaine the same person: And so if he were made Shirife, that his Iusticeship ceased also, bicause (as Marrow saith) he could not be both a Iustice & an Officer to direct & serue, his owne Precepts: and so likewise was it thought of him, if he were made a Coroner, but not so if he were made an Vndershirife. And therefore, for the declaration of the Law in the most of these cases, it was enacted (1.E.6.ca.7.) that if a Iustice of the Peace were made Duke, Marquesse, Erle. Vicount, Baron, Archbishop, Bishop, Iustice of ỹ one Benche or other, Knight, Serieant at the Law,

Law, or Shirife, ỹ yet he ſhuld be Iuſtice of ỹ Peace ſtill: But that acte was afterwarde vpon good reaſon controlled in parte, and a newe law made (1.Mar.Parl.1.ca.8.) by whiche it was ordered, that no man ſhoulde exercise the office of a Iuſtice of the Peace, during only the time that he is Shirife of the ſame Countie, wherein he is alſo Iuſtice of the Peace.

Furthermore, if the Iuſtices in Eire (being of a higher power than Iuſtices of the Peace) doe (after proclamation therof firſte made) come into any Countie and ſit there by vertue of their auctorities, then ceaſeth the auctoritie of the Commiſſioners of the Peace by Mar. And he thinketh ſo likewiſe if the Kings bench vpõ proclamation therof made, ſhoulde remoue into any Countie. But aſke of this, for if it ſhould be ſo, then it may be ſome queſtion alſo what is wrought by the comming of the Iuſtices of the *Niſi prius* into the Countrie, who doe ordinarily bring Commiſsion of Oyer, & Determiner, and of Gaole deliuerie with them. By the preſence of a higher power.

Laſtly, if Iuſtices of the Peace, that haue a Commiſsion *hac vice tantum*, do ſit by vertue of their Commiſsion, & do not Adiourne the ſame, it ſeemeth that their Commiſsion is determined therby. Brooke. *Tit.* Commiſſion. 11. By want of adiournement.

That

That al the auctoritie of the *Iustices* of the Peace is exercised, either out of the *Sessions*, or at, (or by reason of) the *Sessions*, of the Peace. &c.

Cap. xv.

A summe of that which is saide.



Hitherto I haue dilated that which lyeth in ỹ first part of the Definition of the Iustices of peace, I haue withal giuen you a Theoricque (or Insight, as it were) of their whole Office, in shewing what it is, when it began, how it is endowed, by what meanes it is maintained, and after what sort it may be determined.

But now, for as much as all the power of the Iustices of the Peace is directed to that end whiche is disclosed in the latter parte of the same Definition, namelye, For the conseruation of the Peace, & for the execution of their Commission and of the Statutes committed to their charge, it is méete, that

that I enter into the Practicque of their Office & dutie, & shew you from pointe to point how the same is to be done & administred.

And for ỳ more lightsome proceeding herein, I will set forth the power of the Iustices of the Peace by a Distribution thoughe not Essential, yet such as may suffice to conueigh my whole meaning.

Whether therefore, the Iustices of the Peace, doe (by vertue of the Commission, or Statutes) enquire, or Heare and Determine by the way of Iurisdiction or else doe kæpe (or cause to be kepte) the Peace, or doe punishe and execute, by waye of Coertion: And whether the same also be done, by their Regular power, or Absolute auctoritie: It is always practised and done, either out of the Sessions of the Peace, or else at (or by reason of) the Sessions of the Peace.

A partition of that which foloweth in both these bookes.

And that which is done out of the Sessions, is either such as one Iustice alone maye doe, or else it requireth the helpe & presence of other Iustices with him. And therfore first of that whiche one Iustice alone maye doe out of the Sessions.

The summe of that whiche is hereafter conteined in this first booke.

Of *Suertie* of the Peace, and the *Good Abearing*: and of sundrie things incident vnto the same. And what one *Iustice* of Peace out of the *Sessions* may do therin.

CHAP. XVI.

FOr as much as the Conseruation of the Peace standeth, partlye in prouiding that it be not broken, and partlye in punishing such as haue alreadie violated and broke it: and for that any one Iustice of the Peace is sufficiently armed with auctoritie (out of the Sessions) to preuent the breache of the Peace, both by taking Suertie for the keeping of it, and for the good behauiour also of offendors, I thinke good, first to shew what Suertie of the Peace is: then to open howe it maye bee commaunded: after that to declare, how the same commaundement shall be executed & brought to effect: fourthly, to disclose what shal become of the Suerty when it is taken: and lastly, to describe the Suerty of the good behauiour or good Abearing, & to conferre the handling therof with that of the Peace.

The partes of this Chapter.

The auntient Normans had a manner of Suertie of the Peace, whiche they named Treues (the same that we cal Truce) & which they

they vsed to giue after this order. He of whom it was demanded, did (in opē Court) take him by the hande, that demaunded it, & did withall solemnely sweare, that neither he, nor anye of his, shoulde doe him harme. But our Gouernours, knowing that euill men be more restrayned by losse of goods, than by conscience of an oath, haue vsed to take sure bonds, and that to the Prince, for the securitie of such as be in feare. And therfore, I wil at this day cal Suertie of ỹ peace, An acknowledging of a bond to the Prince, taken by a Iudge of Recorde, for the keeping of the Peace. And it is called Suertie of the word *Securitas*, bicause the partie that was in feare, is thereby the more quiet and secure.

What suerty of the Peace, is.

This Suertie may a Iustice of the Peace commaunde, either as a Minister when hée is willed to do it by a higher auctoritie: or as a Iudge when he doth it of his owne power deriued from his Commission. He doth it as a minister, when the writte of *Supplicauit*, (which in old time was called *breue de minis* as appeareth by ỹ Register) directed out of ỹ Chauncerie is deliuered into his hands: for then he only is to direct his Precept to compel the partie vpon that writ to find Suertie for the Peace. 21. H. 7. 20. Fineux.

Suertie of Peace taken vpon a *Supplicauit* by a Iustice of the Peace, as a *Minister*.

The forme of which Precept (or warrant) may be thus, in English:

GEORGE MVLTON, one of the Iustices of the Peace of our Soueraigne Lady the Queenes Maiestie within the Countie of *Kent*, To the Shirife of the saide Shire, the Conestables of the hundred of *Wroteham*, the Borsholder of the Towne of *Ightham*, and to al and singular the Queenes Maiesties Bailies, and other ministers, as wel within liberties as without, in the said Coūtie, and to euery of them greeting. Know ye that I haue receyued the commaundement of our sayde Soueraigne Ladye in these wordes (**reciting the whole Writte of** *Supplicauit*, **which is not alwayes of one forme, bycause it is sometimes directed to all the Iustices of the Peace, sometimes to them and the** Shirife, **and sometimes to one Iustice alone**) **or reciting onely the effecte of the** *Supplicauit*, **thus:**

Knowe yee, that I haue receyued the commaundemente of oure sayde Soueraigne Ladie, to compell. *A. B.* of *Ightham*, in the sayde Countie yeoman, to finde sufficiente suerty for hir Maiesties Peace by hym to be kepte towards *C. D.* of the sayde Towne

Towne of *Ightham* Taylor. And therfore on the behalfe of our ſayde ſoueraigne Ladye, I commaunde and charge you ioyntly & ſeuerally, that immediately vpon the receipte hereof you cauſe the ſaide *A.B.* to come before mee, at *Ightham* aforeſaide, to finde ſufficient ſuerty and mainpriſe for the Peace to be kept, towardes our ſayde Soueraigne Ladie, and al hyr liege people, & ſpecially towardes the ſayde *C.D.* And if he the ſayd *A.B.* ſhall refuſe thus to doe, that then you hym ſafely conuey, or cauſe to be ſafely conueyed, to the next Gaole of hir Maieſty in the ſayde County, there to remaine vntill that he ſhall willingly doe the ſame. So that he maye bee before the Iuſtices of the Peace of our ſaid ſoueraign Lady within the ſaid Coũty at the next general Seſsiõs of the Peace to be holdon at *M.* there to aunſweare to our ſaide Soueraigne Ladye for his contempte in thys behalfe. And ſee that you certifie your doyng in the premiſes, to the ſayd Iuſtices at the ſayd Seſsions, bringing thẽ thyther thys Precept wyth you. Yeouẽ at *Ightham* aforeſayde, vnder my Seale the fourth daye of Auguſte in the 23. yeare. &c.

Suertie of the Peace, taken by a *Iuſtice* of the Peace as a *Iudge*.

A Iuſtice of the Peace may alſo by vertue of his Office and as he is a Iudge, commaunde this Suertie to be founde, and that either

either of his owne motion and discreation, or else at the requeste and prayer of an other.

By his owne discreation.

For he maye cause a Commune Barrettour, Ryotter, one that maketh an Affray, or other person to him Suspected, to finde Suertie of the Peace 9. E. 4. 3. *Curia* And if hée sée menne contending in hotte wordes, and threatning the one to hurte (or kill) the other, he may of Discreation, and oughte of Duety (as I thinke) to commaunde them to finde Suerty of the Peace, and thereby provide for their mutuall safetie. For as he is put in trust with the care of the Peace: so oughte he both to imploy his witte, and to vse hys auctoritie, to preuent the Breache of the same. And if a man that was bound to kéepe the Peace, haue broken his bonde, the Iustice of Peace oughte of Discreation to bynde hym of newe. 21 E. 4. 40. & Marrow.

And his authoritie is so little to bée controlled in this matter, that, Mayster Marrow is of the opinion, that if a Iustice of the Peace should procure one man to demaund Suerty of the Peace againste an other, and hée hym selfe shoulde graunte a Warrant for it, by whyche the partie is arrested, yet no Action

Action woulde lye againſte that Iuſtice for ſo doing: bycauſe he might haue graunted it without anye demaunde made: and then it ſhall not bee ſayde but that he ſawe cauſe to prouoke the partie to aſke it, and himſelfe to graunt it.

I doe on the other ſide remember, that a Iuſtice of the Peace, was putte out of the Commiſsion of the Peace by order in the Starre Chamber, for that he refuſed to accepte a Suertie of the Peace offered vnto hym by one that was commanded (by an other Iuſtice of the Peace in the ſame Shire) to finde Suertie of the Peace, to whome (as the partie alleaged) he durſte not go to offer it, for feare that he would execute vppon him the malice that he bare againſt him.

Suertie, at the requeſt of an other.

In commaunding this Suertye, at the ſuite of an other, or of his owne diſcreation, ſundrie things are wiſelie to be conſidered, firſt, for whom, and againſt whom, then for what cauſe and how it ought to be required or commanded, and laſtly by what meanes it ſhall be enioyned.

For whom, and againſte whom, *Suertie* of the Peace lyeth.

The wife, if ſhe be threetned to be killed, or to be outragiouſly chaſtiſed, by hyr huſbād, may with good reaſon demaunde the Peace

againſt him. Fitz. Nat. Br. Fo. 80. & 239. And I do not doubt but a Iuſtice may in ſuche a caſe cõmaunde it vpon his own diſcreation.

The huſbande alſo maye demaunde the Peace againſt his owne wife in ſuch a caſe: and any man may demaunde it againſt the wife of an other. Mar.

A man attainted of Treaſon, or Felonie, or conuicte of Hereſie, or Abiured, a Dumbe man, or an Infant, (though within 14 yeres of age) or a Villaine againſt his Lord, maye demaunde and ought to haue, Suertie of the Peace, Mar. And I doe not finde any ſtrong reaſon why the Lord againſt his villaine, or an other mã againſt a dumbe mã or againſt an infant aboue the age of 14. yeares, ought not vpon good cauſe to haue it, thoughe the two laſt can not well be bound themſelues. But a madde man ſhall not haue Suertie of the Peace, at his owne requeſt (as Mayſter Marrow thought) bycauſe he hath no diſcretion to aſke it: and therefore (if there bee cauſe) he oughte to bee prouided for by the diſcreation of the Iuſtice, as I thinke.

A man attainted in a Premunire, or that is an Alien borne, and no Denizein, oughte not to haue this Suertie at his deſire, as M. Marrow taketh it: But perhappes he would haue chaunged his opinion, in the caſe of Pre-

Premunire, if he had liued at this time, vpon the Statute 5. Elizab. ca. 1. for, such a mã may not now be killed, as though he were out of the protection of the Queene: And as touching the Alien, some think there ought to be a difference betweene suche an Alien, as is of the Enmitie of the Queene and him that is of hir Amity: for the Statutes (Mag. Cart. ca. 30. 9. E. 3 ca. 1. 14 E. 3. Stat. 2. ca. 2. and sundrie others) do all vse that difference in Merchant Straungers, and doe prouide, that such of thẽ as be not Enmies of the Realm, may both safely come into the Realme, and tarry here, and go hence, at their pleasures.

But the case may well be doubted of, because the Commission it self seemeth to authorize the Iustice of Peace, no further thã to prouide for the Quéenes people, of whiche number no Alien seemeth to be. But why any Alien may not be bound to the Peace, I do not see.

Furthermore, one Iustice of the Peace, (saith M. Marrow) may graunt this Suertie to any man, against one of his fellow Iustices. But, as M. Marrow requireth a Discretion in a Iustice of the Peace, when Suertie is craued of him against a Shirife, Coroner, Escheator, or such other Officer, (whom he wisheth not to be bound to kéepe the Peace

versus cunctum populum, but onely towardes him that prayeth it, least otherwise it shuld argue thē to be vnworthie of such Offices:) so muche more he ought to vse good discreation, in graunting it against his fellow Iustice, least otherwise he both bring the Office in contempt, and himselfe to reproofe by it. But I doubt not, but that one Iustice of Peace (if he will) may pray suretie of the Peace at the hands of his fellow Iustice against an other person, & the recognisance may then be according to the cōmon forme, with an *& præcipuè versus, &c.*

Hitherto of those, for whom, and against whom the Iustice of Peace may grant this Surety when it shal be required, which wil suffice to giue him light what to doe in like cases. But som others ther be perhaps with whom he may not wel medle. As if any mā haue cause to require ỳ peace against a Lord, he for so small a cause is not to be arrested (as I take it) by warrant from a Iustice, nor yet by a *Supplicauit* out of the Chauncerie.) But the Lord Chauncelor may in such case graunt to the partie a *Subpœna* against that Lord for it, as it seemeth by. 35. H 6. Fitz. Tit. *Subpœna*. 20. For such an opinion the law hath had of the peaceable disposition of Noble men, that it hathe beene thought ynough,

Suretie of the Peace against a *Lord*

nough, to take one of their promises vpō Ho nor that he would not breake the Peace against a man. If we may beleeue the report of M. Brooke Tit. Contempts. 6. to be true.

The cause for which this Suretie of the Peace may be required or commanded, appeereth in the first *Assignauimus* of the Commission of the Peace, in these wordes, *Et ad omnes illos qui aliquibus de populo nostro, (de corporibus suis vel de incendio domorum suarū) minas fecerint, ad sufficientē securitatē de pace &c. inueniendum, &c.* which M Fitz. fo. 8. construeth thus. He that is threetned, that he shal be hurt in his bodie, or that his house or goods shal be brent, may demaunde Suretie of the peace for his safegard in that behalfe. But (saith the Court 17. E. 4. 4.) if a man wil demand the Peace, because he is in feare that an other man will take & imprison him, it ought not to be graunted: & one yeeldeth the reason to be, because he may haue a Writte *de homine replegiando*, or an Action of false imprisonment, and may thereby recouer the damages of his imprisonment.

For what cause *Surety* of the Peace may be required.

The same reason might be made against the demaund of the Peace, where a man is threatned with Batterie, and yet it is cleare, that in suche a case the Suretie of Peace ought not to bee denyed him: & truly to

to threaten imprisonment, is within the words *Minas de corporibus*, no lesse than Batterie it selfe, and like harme may happen by hard imprisonment, & cruel beating. It shal bée good therefore to enquire of this matter.

How *Suretie* of the peace is to be required. By Oathe.

The Peace being thus for good cause required, it is the common manner to crave an Othe of the party, whereby the Iustice may be the better informed and induced to thinke, that the party doth not aske it for malitious veration of an other, but of very feare, & for the needfull safetie of hymselfe and his. And M. Fitzh. (in his Nat. Bre. Fol. 79) laboureth to shew, that the Iustices of the Peace ought not (without such an Othe) to graunt this Suertie of the Peace at any mans sute. Forasmuch as not onely the Iudges of the Kyngs Bench do yet take an othe in such cases, but the antient course of the Law was such in the Chauncerie it selfe also, although it be now adayes otherwise vsed there. And that a Iustice in this case may the better iudge of this Feare, let him hearken what M. Bracton Fol. 16. saith: *Metus est* (saith he) *præsentis, vel futuri periculi causa mentis trepidatio, talis enim debet esse metus, qui in se contineat mortis periculum, vel corporis cruciatum.* And therefore, if a Iustice of the Peace, doe perceiue, that the peace

peace is demaunded against such a person, as for his impotencie is not like to breake the Peace, he may safely deny it, sayth M. Marrow: But, *Satius est peccare in alteram partem.* as I suppose, least (if he bee slaine that demaunded it) the Iustice be worthily blamed, for that he prouided not for his life and safetie. And besides, the common forme of the Recognisance, is to bind a man from procuring hurte, which any impotent man is able to do.

It resteth, that I shewe, by what meane this Suretie may be enioyned: and that is, either by Word, or by Writing vnder Seale. For a Iustice of the Peace, may by word onelie commaunde a man (being in his presence) to finde Suretie of the Peace. 9.E.4.3. for, seeing that he is a Iudge of Record (saith M. Fitzh. Fol. 8.) his Precept by mouth is stronger than his Precept in writing. By what meanes Suretie of the Peace, shall be enioyned. By Word.

So if the Peace be demaunded against one that is in his presence, hee may commaund the Shirife, or other knowen Officer, or his own seruant (if they be then present also) to arrest the partie to finde thys Suretie 14.H.7.8.& Mar. But, if eyther the Officer, Seruant, or Party be absent, then it is requisite to make a Warrant (or Precept)

cept) in writing: The forme wherof may be thus in Englishe: for I see no cause yet why it should be directed in Latine to a Constable or Borsholder, that (by all presumption) understandeth no Latine.

By writing, or a Precept for the Peace

Kanc.

Elizabeth by the grace of God &c. To our Shirife of *Kent*, the Conestables of the Hundred of *Wroteham*, the Borsholder of the Towne of *Ightham*, and to al and singular our Bayliffes, and other our Ministers in the sayde County, as well wythin liberties as wythout, greeting. Forasmuch as *A.B.* of *Ightham* aforesayd, Yeoman, hath personally come before *G. Multon* of the sayd town Esquire, one of our Iustices of the Peace within the sayd Countie, and hath taken a corporall Oath, that he is afraid, that one *C. D.* of *Shipborne*, in the sayde Countie Yeoman, wyll beate, wound, mayheme, or kyll hym, or burne hys houses, and hath therewithall prayed suretie of the Peace agaynst the said *C.D.* Therefore we commaund and charge you iointly and seuerally, that immediatly vpon the receit hereof, you cause the sayde *C.D.* to come before the sayd *G.M.* or some other of our sayd Iustices, to finde sufficient suretie and mainprise for our Peace, to bee kept towardes vs, and all our liege people, and chiefly towards the said *A.B.* that is to saye,

All, or any one of these causes may suffice.

say, that he the sayd *C.D.* shall not doe, nor by any meanes procure or cause to be done, any of the sayde euilles, to any of our sayde people, and especially to the sayd *A.B.* And if he the sayd *C.D.* shall refuse thus to doe, that then you him safely conuey, or cause to be safely conueyed, to our nexte pryson in the sayde County, there to remaine vntill he shal willingly doe the same: So that hee may be before our said Iustices, at the next generall Sessions of the Peace to be holden at *M.* in the sayde County, then and there readie to answere vnto vs, for his contempt in this behalfe. And see, that you certifie your doing in the premisses to our said Iustices at the sayde Sessions, bringing then thither this Precept wyth you. Witnesse the sayde *G.M.* at *Ightham* aforesayde, the 4. day of August, in the xxiij. yeare of oure raigne.

Or thus, in the name of the Iustice himselfe, *mutatis mutandis.*

GEORGE MVLTON Esquire, one of the Iustices of the Peace of our Soueraigne Lady the Queene, wythin the said County, to the Shirife &c. greeting.

Forasmuch

Forasmuch as *A. B.* &c. hathe personally come before me, &c. These shall be therefore, on the behalfe, and in the name of our said soueraigne Lady, to commaunde you ioyntly, &c. to come before mee, or one other of hir Maiesties saide Iustices of the Peace in the said Countie, &c. Giuen vnder my Seale, at *Ightham* aforesaid, &c.

It is meete, that the precept for the peace, do expresly containe the cause of the Peace within it: for otherwise, how can the Officer or Party take knowledge, that Suretie, must be prouided for it? Yea (by the way let me say it) euery Precept (made by a Iustice of the Peace) ought to comprehende the speciall matter vppon which it proceedeth, euen as all the Queenes Writtes doe beare their proper cause in theyr mouth with them.

And, as for the Forme that is now commonly vsed (To aunsweare to such things as shall be obiected) it was not fetched out of the olde and learned Precedents, but lately brought in by such as eyther knewe not, or cared not, what they writte.

The Warrant of the Peace is the better also, if it beare Date of the place where it was made: for if a man be to pleade suche a Precepte for his excuse in an Action of

false

false imprisonment brought against him, he ought (in his Plea) to shewe the place where the Warrant was made. 14. H. 8. 18.

And this Precept may also be directed to any indifferent person, by name, though he be no Officer at all: for so it seemeth to bee permitted in the Oath of the Iustices of the Peace, and so is the Booke also 14. H. 8. 18.

The commaunding of Sureties of the Peace hath thus appeared: and nowe the execution, and bringing of that commandement to effect, must next be disclosed. How the commaundement of the *Peace* shall be executed.

The execution of this Precept standeth, partely in seruing the Precept it selfe: and partely in taking the Recognisaunce, if the partie doe come with Sureties, and that there be no let in the way.

And because (for the moste parte) there is but one and the same maner of doing, whether the Precept come from the Iustice of the Peace, as he is a Minister, or as hee is a Iudge, I also wil handle them togither, noting by the way, those few differences that shall arise betweene them.

If suche a Precept be made iointly to twaine, yet the one alone may serue it: If it be directed to the Shirife, he may commaund his Baylife, Vndershirife, or other (sworne and knowne) Officer, to serue it, without The seruing of the *Precept* for the Peace.

writing any Precept. But if he will cõmand another mã (that is no such Officer) to serue it, he must giue him a writtẽ Precept, for otherwise a Writ of false imprisonment will lye for the Arrest. But if it be directed to the Baylife, or to a seruãt of a Iustice of ỹ peace, or other stranger, they muste serue it themselues, for they can commaunde none other to do it, neither by word nor Precept. Mar.

A sworne and known Officer, nédeth not to shew this Warrant, whẽ he doth serue it vpõ a mã. 8. E. 4. 14: & 20. H. 7. 13. &c for his Office doth after a sort auctorize him. But if the Iustice will set his seruãt to serue it, ỹ seruant must shewe the Warrant (if ỹ party demaunde it) and otherwise the party may make resistaunce, 8. E. 4. 14. A Iustice of the Peace (saith M. Brooke *Titulo* Peace. 9.) may make this Warrant returnable before himself, & the Baylife néedeth not to carry ỹ partie before any other Iustice. But Iudge Fineux (21. H. 7. 20) saith, ỹ if a Iustice of the Peace do make a Warrãt of ỹ Peace *Ex officio*, (ỹ is, without any Writ of *Supplicanit* directed vnto him) thẽ the partie may chuse to appeare before him, or any other Iustice in the Shire, and that he shall punishe the Baylife in false imprisonmẽt, if he do otherwise compell him: But that otherwise it is in the execution of the Writ of *Supplicanit*:

for

for he, to whose hands it is first deliuered, is authorized to execute & returne the Writ alone. And thervpon M. Fitz. (in his Nat. br. Fo. 81.) affirmeth, that if such a Writ of *Supplicauit* bee deliuered to ỳ Shirife, thẽ he may both execute it alone, & also take Suertie by Recognuſance (thogh otherwiſe, being but a Conſeruator he could not do it) becauſe the Writ doth enable him ſo to do: yet ỳ opinion of Littleton, 9. E. 4. 31. is to ỳ contrary of that.

The Officer ought alſo to require the partie to come & finde Suertie of the Peace before that he do arreſt him, by the opinion 5. E. 4. 13. And in truth, the common forme of the Precept is, And if he refuſe ſo to doe, that then he ſhal conuey him to the Gaole: and therefore, if he will willingly come and finde Suertie, the Officer may neyther abſolutely arreſt him, nor take fee of him.

And this may be the cauſe, that when one vpon ſuch a Warrant commeth to a Iuſtice of the Peace to find ſuch Suertie, the Iuſtice nedeth not againe to demaunde ſuertie of him, but may commit him, if he do not offer Suertie as the opinion is. 14. H. 7. 9.

If a Bailife do arreſt a man for the peace, before that he haue any Warrant, & then afterward do procure a Warrant for it, this is vnlawfully done, and will not excuſe

him in an Action of false imprisonmēt, *ibidem*. But if the Baylife do cause one by force of a Warrant, to come and finde Suretie of the Peace, & when the partie commeth, the Iustice will not binde him, yet the Baylife is excused. 21. H. 7. 22.

If Suretie of the Peace be required at the handes of a Iustice of the Peace (that dwelleth out of the Countie) against a mā within the Countie, the Iustice may graunte a Precept to be serued in the Countie, but when the partie shall be therevpon warned and commaunded to finde Suretie the Officer may not haue him out of the Countie to the Iustice of Peace that made the Warrāt, Marr. For, a Iustice of ỹ Peace hath no autoritie, but in the Countie where he is Iustice by 13. E. 4. 8. & *Coment. Plowd.* 37 & therfore it may be doubted also whether suche a Warrāt be good, or no. The Case was there, that a Iustice of Peace in one Countie, pursued a Felon, & toke him in an other Countie, wherevpon it was holden, that he ought to be committed to the Gaole of the County wherein he was taken, and not of the Countie, wherein he which toke hym was a Iustice, for that, he (being out of hys Countie) had no more authoritie, than a priuate man. But I thinke the Baylife may not

not dispute the sufficiencie or insufficiencie of such a Warrant, because he that awardeth it is a Iudge of Recorde 14.H.8.18.

That whych hath beene hitherto saide, is of the execution of the former parte of the Warrant for the Peace, that is to saye, to warne and cause the partie to come and finde Surety for the Peace. But if it fal out, that he refuse to come and put in such Surety, then may the Officer, by vertue of hys Warrant conuey him to prison. For (if you remember) the wordes are, And if he shall refuse, then, &c. And now for our better instruction, let vs see what an Arrest is.

What an Arrest is.

Budee in his Greeke Commentaries, is of the opinion, that the Frēch word (Arrest) whych wyth them signifieth a Decree, or Iudgement of a Court, toke beginning of the Greeke ἀρέσκω that is, *placitum*, and (as we might say) the Pleasure (or wil) of a Court.

And albeit that it were not out of our way, to thinke that it is called Arrest, because it stayeth (or resteth) the partie, yet I beleeue rather that we receiued the name from the Normane lawes, because wee vse it in the same sense wyth them: For commonly wyth vs an Arrest is taken for the execution of the commaundement of some Courte, or of some Officer in Iustice. But

howsoeuer the name beganne, An Arrest is a certaine restraint of a mans person, depriuing it of his own wil and libertie, and binding it to become obedient to the will of the Lawe: and it may bee called the beginning of Imprisonment. The Precepts and Writs of the higher Courts of Lawe, do vse to expresse it by two sundry wordes, as *Capias* and *Attachias*, which signifie, to take (or catch) holde of a man. But this our Precept noteth it by the wordes *Duci facias* (cause him to be conueyed, &c.) for that the Officer hath (after a sorte) taken him before, in that he commeth vnto him, and requireth him to goe to some Iustice of the Peace.

To this Arrest al persons (vnder the degree of Lords, (or Peeres) of the Realme) be subiect: And Ecclesiasticall persons (if they bee not attendant vpon diuine seruice) may bee arrested for the Peace also: Mar.

Deliuerie of him that is imprisoned, for refusing to finde *Suertie*

The ende therefore is, that if the partie wil not come to finde Suertie of the Peace, the Officer may (vpon that Warrant) arrest and carry him to the Gaole, where hee shall remaine, vntill that hee will freely offer, & finde it. But it is good to be enquired whether the Release, or Death of him that prayed the Peace will not bee sufficient cause to deliuer such a prisoner: and if it shall bee, then

then by what order hée shall bée deliuered. For as it séemeth to some, ỳ any Iustice of the Peace, may (vppon his offer) take the Suertie, and deliuer him: so it may bée some doubt, whether hée may bée deliuered (vpon the death, or release of the partie) wythout the helpe of a Sessions, or Gaole deliuerie.

It appeareth 4.E 4.16. and by the opinion of Bryan. 2 H.7.2.& 4. that if such an imprisoned person had a sute hanging in the Common place afore hand, he might by a Writ of Priuilege be discharged of ỳ same, if the partie, at whose sute he was arrested for the Peace, were not ready in Court at the day of the returne of the Writ when hée should be called to pray ỳ Suertie of ỳ peace there again against him, & saith, that it had bin alwaies their cõmon course so to do: but diuers other there were of a cõtrary opiniõ, & it séemeth a hard case, ỳ without any sufficient notice of such a remouing of the partie, a mã shold be defeated of his Suertie so.

But now, if the partie shal yéelde to finde Suertie of the Peace, then may he at his libertie, if the Precept proceede *Ex officio*, and without the Writ of *Supplicauit*, go to any Iustice of the Peace, to offer this Suertie. To what Iustice hee that is arrested may goe.

Herevppon it happeneth often, that such persõs, (chosing rather to be bound by any other, thã him that maketh ỳ. Warrãt)

hauing any suspitiō of such a precept awarded or likely to be awarded, do offer themselues, & become bounde before some other Iustice. And thereupon do procure a *Supersedeas* from him to be discharged of any other Arrest to be made. Yea, & many times (hearing of such Precepts, and misliking to be boūd in the Countrie) they go vp to *Westminster*, and giue Suretie of the Peace there, either in ỹ Kings Bench for a time only (as the maner of that Court is (or in the Chaūcerie for euer (as they vse it there) and doe wythall procure a *Supersedeas* from the Court where they are bounde, to close the handes of the Countrie Iustices. And therfore it is not amisse to say somewhat of this matter of *Supersedeas* also.

Supersedeas, by a Iustice of the Peace

If a Iustice of the Peace then will (by a *Supersedeas*) discharge a Precept of the Peace, that was made by his felow Iustice, he shal do wel to take the Recognusance according to the day of apparance (if ther be any) & after the forme of ỹ former Precept (if there be any). For, as it is good reason, that hauing taken Suertie for the Peace, he may by his *Supersedeas* saue the partie from finding other Suertie for the same cause: So is it against reason, that he shoulde giue the partie anye other daye of apparaunce than

than the Precept had, and thereby discharge a matter of Recorde that was made by one of equall authoritie with hym. Fitzh. Fol. 9. Much lesse may the *Supersedeas* of a Iustice of the Peace, discharge a Precept of his fellow Iustice proceeding by vertue of a *Supplicavit*, for that it is of an higher authoritie. Mar.

This *Supersedeas* sente by a Iustice of the Peace, is sufficiēt, although it neither name the Suerties, nor contain the sūmes in which they are boūd: But yet it is ẏ better forme to expresse thē both, as well bycause the higher Courts vse so to doe: as also if the Bailife, Constable, or other Officer (to whom it is deliuered in discharge of his Warrant) bee called at the nexte Sessions by the suite of him that sought to haue the Peace, to shewe how he hath executed his Warrant, and hee come in and shewe forth the *Supersedeas*, the partie that is bounde may be called thereupon, at the day that appeareth to be limited vnto him by ẏ *Supersedeas*, for it is vnder the seale of a Iustice, and doth testifye that the partie is bound and hath founde suertie, to appeare at a certaine day, and if he make default, that being Recorded shall bee sufficient to cause him to forfaite the penaltie of the Recognisance, although the Iustice that

made it out, shal happen not to bring in the Recognusance it selfe, according as he now ought to doe by the Statute. 3.H.7.ca.1. And this may be gathered vpon the opinion. 2.H. 7.1 and maye bee seene by this forme of it here vnder written.

The forme of a *Supersedeas*, by a *Iustice* of the Peace.

GEORGE MVLTON, one of the Iustices of the Peace of our Soueraigne Lady the Queenes Maiestie within the Countie of *Kent*, To the Shirife, Bailifes, Conestables, Borsholders, Ministers, and other the Faithfull subiectes of our said Soueraigne Ladie within the saide Countie, and to euerie of them, sendeth greeting: For as much as *A. B.* of &c. Yeoman, hath personally come before me at *Ightham* &c. and hath found sufficient suertie, that is to say, *C.D.* & *E.F.* &c. Yeomen, either of the which hath vndertaken for the said *A.B* vnder the paine of xx. *li* and he the said *A.B.* hath vndertaken for himselfe vnder the peine of xl. *li*. that he the saide *A. B.* shall well and truely keepe the Peace, towards our said soueraigne Ladie, & all hir liege people, and specially towardes *G.H.* &c. Yeoman, & also that he shal personally apeare before the Iustices of the Peace of our said soueraign Ladie within the said Countie, at the next general Sessions of the Peace

Peace to be holden at *M.* there: Therefore, on the behalfe of our ſaid ſoueraigne Ladie, I commaund you, & euerie of you, that yee vtterly forbeare and ſurceaſe, to arreſt, take, inpriſon, or otherwiſe by any meanes (for the ſaid occaſion) to moleſt, the ſaide *A. B.* And that if you haue (for the ſaid occaſion, & for none other) takē, or impriſoned him, that then you do cauſe him to bee deliuered and ſet at libertie without further delaye. Yeouen at *Ighthā* aforeſaid vnder my ſeale, this laſt day of Iuly in the xxiij. yeare. &c.

Which alſo may bée in the name of the Prince, and vnder the Teſte of the Iuſtice of the Peace, thus:

ELIZABETH, by the grace of God &c. To the Shirife &c. greeting: For as much as *A. B.* hath come before *G. Mulſon*, one of our Iuſtices of peace within our ſaid Coū tie, and hath found &c. We therefore commaunde you and euerie of you, that ye forbeare &c. Witneſſe the ſaid *G. M.* at *Ighthā* aforeſaid &c.

Thus muche of the *Superſedeas* iſſuing from a Iuſtice of the peace, the which ought to with-holde and ſtay the proceeding of his fellow

fellowe Iustices in the saide cause: in so muche that if anye Officer by any of their Warrants hauing this *Supersedeas* deliuered to him, will neuertheless vrge the partie to finde new Suerty for the peace, he may refuse to giue it, and (if he be committed to prison for suche his refusall) he maye (as I thinke) haue his action of False Imprisonmente againste the Officer vppon the same.

Supersedeas, out of an higher Court.

Much more then will a *Supersedeas*, that commeth out of the Chauncerie, or Kings Benche, or from anye Iustice of the Kings Bench, discharge such a Precept for ỹ Peace awarded from any Iustice of the Peace. And therefore, if the Iustice of the Peace (to whõ such a *Supersedeas* shal be deliuered) will not therupon surceale, an Attachement may be awarded againſt him, for his contempt, and he may be imprisoned, and fined, for it. It is good counsell therefore, that M. Fitz. (in hys Nat. Br. Fo. 238.) giueth, where he willeth the Iustices of the Peace (after such a *Supersedeas* receiued) to forbeare to make anye Warrant to arreſt the partie, & if they haue awarded it, then to make their owne *Supersedeas* to the Shirife and other Officers, therby commaunding them to surceale to execute it.

This

This impediment of *Supersedeas* (lying after this sort as you haue seene in the waye to the Iustice of the Peace) thus passed ouer, let vs nowe suppose the partie serued with the precepte, to come before some Iustice of the Peace, and let vs enter into the taking of the Recognuisance of him, for that is one part of the execution of the Warrant for the Peace, and may doe seruice whether the partie come to him that made the Precept, or to any other.

The taking of the Recognuisance for the Peace.

If the Iustice of the Peace deale in thys matter, as a Iudge, and by vertue of the Commission, then the number of the Suerties, the summe of their bonde, their sufficiencie in goods or landes, the time how long he shall be bounde, and some other such circumstances, are referred wholie to his own consideration, and if he be deceiued in the abilitie of the Suerties, hee maye compell the parties to put in others: Marrow.

The Commune manner is, to take two Suerties, besides the partie himselfe: and good reason it is that those shuld be such as haue their names registred in the Booke of Subsidie: for albeit that here and there some maye be sufficient, that were not assessed to the Queene, yet it standeth not well togither that hee shoulde become bound

bounde to the Prince in tenne or twentie poundes, that was not in the Subsidie found worth any thing at all.

But if he commmaunde the Peace as a Minister in execution of the Writts of *Supplicauit*, then he must behaue himselfe as the Writte it selfe directeth him: and that hath not bene alwayes after one manner: for some forme commaundeth him to take sufficiente Manucaptors in any peine (or sum) to bée reasonably set by himselfe, so that hée will bée aunswerable for it at his owne perill: and some willeth him to take sufficient Suertie in a summe certainelye prescribed vnto him, as a hundred poundes, in all, or euerie of them in twentie pounds, as it may bée séene at large, in the Register of Writtes Fo. 89.

A Iustice of the Peace (saith Maister Marrow) maye take this Suertie by a Gage, or Pledge, which shall not be forfaited therby, but pauned onely, that the partie shall (vnder a certaine peine) kéepe the Peace, whiche peine he shall forfaite, if he breake the Peace. And (by his opinion) a Iustice of the Peace may also take this Suertie by an obligation made to himselfe, by the name of Iustice of the Peace: For so shall it bée (saith hée) *ad vsum Domini Regis*. But if it were made

made vnto him without his name of Iustice of the Peace, that then it coulde not bée to the vse of the King, vnlesse it had the wordes, *aduersum Domini Regis*. Maister Fitzharbert, on the other side (in his Nat.Bre.Fo.81.) holdeth, that suche an Obligation taken to the King, by a Iustice of the Peace, is nothing worth: for a man can not bée bounde to the Prince (sayeth he) but onelye by matter of Recorde, vnlesse he will afterwarde come into a Courte of Recorde, and confesse it to bée his déede, & pray that it may bée Enrolled there.

But the new Statute (33.H.8.ca.39) hathe made a plaine law in these cases, & willeth ỹ all Obligations and Specialities (made for any cause touching the King) shal bee made in his own name, by the words *Domino Regi*, & to none other person to his vse: & it ordaineth further, that such bonds shal bee of the nature of a Statute Staple: and that if any person take any obligation otherwise, he shal bee imprisoned at the pleasure of the King, or of his honorable Counsell.

The safe way therfore, is to take this Suertie by Recognisance as is cõmonly vsed, & that also by the wordes *Domino Regi* and then (vpon the forfeiture therof) the Queene shall haue execution accordingly.

Now

Now, if a Recognusance be ment to be taken for the Peace, by a Iustice of the Peace, and yet do not containe within it, or in the condition thereof, that it was taken For the keeping of the Peace, it seemeth to be voide, as being then taken, *Coram non Iudice*: because a Iustice of the Peace hath not power to take Recognusances generallie, but for matters concerning his Office specially. And therefore Maister Marrow addeth further, that if the Recognusance bee, That the Recognusor shall not mayme, nor beate A. yet it is not good, because it ought to be For the keeping of the Peace, and that may be broken otherwise, as by burning ỹ house of A. or by such like misdemeanour.

Although this Recognusance do not comprehende any day, in which the Recognusor shall appeare, but bee generally to keepe the Peace, yet it is good inough in Law: for the chiefe matter is, The keeping of the Peace, & the time referred to the discretion of the Iustice, and so is it, by Maister Marrow, if a day of his apparance be put into the Recognusance, and no person be named in it, before whom the partie ought to appeare: for he may then (saith he) appeare where he will before that Iustice of the Peace which take

the

the Recognusance of him.

And if the Recognusaunce be in xx. ℔. to be leuied only of the goods, or only of ỹ lãds, of the Recognusor, it seemeth to bee good ynough: for peraduenture the wordes, Of the goods only, or Landes only, shal be taken to bee void, seeing that the verie acknowledgement of the sum of xx. ℔. (before a Iudge enabled to take it) both maketh it a debt, and implyeth the ordinarie meane of Law to come by it.

If this Recognusance be taken, To keepe the Peace against one speciall partie onlye, M. Marrow thinketh it good: but aduize well of it, for the wordes in the Commission of the Peace bee, to take suertie *Erga nos, & populum nostrum.*

But, for the better eschewing of Error & hard dealing in making this Recognusance of the Peace, it is good to vse the receiued forme, which is thus:

The forme of a *Recognusance*, for the Peace.

M*Emorandum, quod 4. die Iulij, Anno regni Domine nostre Elizab: dei gratia, &c.* 23. R P. *de* Ightham *in comitatu predicto* Yeoman *in propria persona sua venit coram me* Georgio Multon, *vno Iusticiariorum dicte Domine Regine ad pacem in dicto comitatu conseruandam assignatorũ, & assumpsit pro seipso sub pœna xx. ℔. Et* H. I. *de* L. *in comitatu predicto* Yeoman: *Et* I.

I. F. *de*

F.de M. *in eodem comitatu* Husbandman *tunc & ibidem in propriis personis suis similiter venerunt, & manuceperunt pro prædicto* R.P. *(viz.) quilibet eorum separatim sub pœna* 100. *ℒ: quod idem* R.P. *personaliter comparebit coram Iusticiariis dictæ Dominæ Reg: ad pacem ad proximam generalem Sessionem pacis in comitatu prædicto apud* Maidstone *tenendam, ad faciendum & recipiendum quod ei per curiam tunc & ibidē iniungetur: Et quod ipse interim pacem dictæ Dominæ Reg: custodiet, erga ipsam Dominā Reg: & cunctum populum suum, & præcipuè versus* M.N. *de* Ightham *prædictæ* Yeoman, *Et quod dammū vel malum aliquod corporale aut grauamen prefato* M.N. *(Nec alicui de populo dictæ Dominæ Reginæ, quod in lasionē aut perturbationem pacis ipsius Dominæ Reg: seu prefati* M.N. *cedere valeat) quouismodo non faciet, nec fieri procurabit: Quam quidem summam xx.ℓb. prædict.* R.P. *& quilibet manuncaptorum prædictorum prædictas separales summas* 100. *solid: recognouerunt se debere dictæ Dom. Reginæ, de terris & tenementis, bonis & catallis suis, & cuiuslibet eorum ad opus dictæ Dominæ Reginæ fieri & leuari, ad quorūcūque manus deuenerint, si contigerit ipsū* R.P. *premissa vel eorum aliquod in aliquo infringere, & inde legittimo modo conuinci. In cuius rei testimoniū, ego prædictus* G.M. *sigillū meum apposui. Dat. apud* Ightha *prædict. die & An. suprædictis,*

Or thus, a little different in forme.

MEmorãdũ q̃ 4 die &c. A.B. de Ighthã *&c. Et C.D. de eadẽ* Yeomẽ, *venerunt corã me G.M. &c. et Manuceperũt p̃d I.S. super de L. &c. q̃ ipse personaliter cõparebit corã me prefato G.M. vel socijs meis Iusticiarijs pacis D. Regis ad proximã generalẽ Sessionẽ &c. Et q̃ ipse interim geret pacẽ erga cunctũ populũ Do. Regine, & precipuè erga R.B. &c (viz.) quilibet manucaptorũ prædictorũ sub pœna 20. ℔. Et prædictus I.S. manucepit pro seipso sub pœna 40. ℔. Quam quidẽ summam 40. ℔. prædictus I.S. & quilibet manucaptorum prædictorũ dictã summã 20. ℔. recognouerũt &c.*

And this may bée wel done also, by a single Recognusance in Latine, with a conditiõ added in English, for the kéeping of the Peace, and for the day and place of the parties apparance at the Quarter Sessions.

The Suertie (or Recognusance) of ỹ Peace, thus cõmaunded, & accõplished, order draweth me to disclose, how ỹ Iustice of the peace is to demeane himselfe with it. What shall be done, with the *Recognusãce*.

If the Suertie were taken, by vertue of a *Supplicauit*, then must the Iustice of ỹ Peace (being in this case but a Minister) make retourn of ỹ Writ, & a Certificat of his doing, into the Court frõ whence ỹ *Supplicauit* did proceed, for help wherin, I wil set him down that which I haue séene put in practise vpon a Writ of that kinde. The returne of a *Supplicauit*.

First, let him note vpon the backe of the *Supplicauit* thus:

Executio istius Breuis, patet in quadam Scedula eidem Breui annexa.

Then may that Scedule be thus:

EGo Wilhelmus Lambard, *vnus custodum pacis Dominæ Reginæ in comitatu Kanciæ, certifico in Cancellariam dictæ Dominæ Reg:me virtute istius breuis (mihi per A. B. in eodem breui nominatum, primo deliberati) personaliter coram me (tali die & loco) venire feciſſe Thom: R. in dicto breui nominatum, ac eundem Tho. ad ſufficientem ſecuritatem, & manucaptores inueniendum, ſecundum formam dicti breuis, (viz.* (as the Writ shall appoint, which is of diuers formes, as I tolde you before) *compuliſſe: In cuius rei teſtimonium huic præſenti Certificationi meæ ſigillum meum appoſui: Dat. apud D. prædictam, in comitatu prædicto 5. die Iulij anno regni dictæ Dominæ noſtræ Elizabet. dei gratia, &c. 23.*

The returne of a *Certiorari.*

And if a *Certiorari* be directed out of the Chauncerie to the Iustice of the Peace for this Recognusance, because it was not sente vp togither with the Certificat, (as there was no necessitie that it should) then that Writ also may be thus aunsweared.

Vpon the backe of the Writte, thus:

Virtu-

Virtute istius breuis, ego W.L. *vnus custodum pacis domine Regine in comitatu K. tenorem securitatis pacis (vnde infra fit mentio) dicte domine Regine in Cancellariã suã sub sigillo meo distincte & aperte mitto, prout patet in Scedula huic breui consuta.*

The which Scedule may be thus: *Memorandum, quod* 20. *die Iun. &c.* (reciting the whole Recognusance to the end therof.)

Then, *In cuius rei testimonium ego predictus W.L. sigillum meum apposui: Dat. &c.*

And this may serue also, where a *Certiorari* is brought to a Iustice of the Peace, to remoue a Recognusance of the Peace taken by him *Ex officio*, without any such Writ of *Supplicauit*, as you may reade in the Register, Fol. 90.

But if the Recognusãce be not thus remoued from the Iustice of ỹ Peace, then may he kẽpe it till the *Certiorari* come to him for it.

On the other side, if ỹ Recognusance were takẽ by vertue of his Office, then (whether it were by his own discretion, or at the sute and desire of another) he must send, or bring it in at the next Sessions, to the *Custos Rotulorum*, so that the Recognusor may be ther called, and if he make default, then the same default to be recorded, as is appointed by ỹ Statute. 3. H. 7. ca 1.

The certifying of the *Recognusãce* and release to the Sessions.

I.iij. And

And here againe, some difficulties doe arise, ỹ may make the Iustice of Peace sometimes doubtfull, howe to holde, certifie, or sende in the Recognusaunce. For sundrie meanes there are, by which this Recognusance of the Peace may (before any forfeyture therof made) be after a sort discharged, and therfore let vs consider them apart, and withal giue some aduise what shal bee beste to do therein.

Releasse of the *Peace* by a *Iustice* of Peace.

The Iustice of Peace, that of his owne motiõ compelleth one to giue Suertie of the Peace vntil a certaine day, may by like discreation before that day releasse it Fitzh. Fo. 10. And if it shoulde fortune to be made to kéepe the Peace generally, without any day limitted, then would it be construed that it was to continue during the life of the partie bound, and then could no man releasse it, by Fitz. & 21. E. 4 40 If (at the suite of A.) ỹ Recognusance should bee taken, To keepe the Peace against A only and none other, then may A. releasse it, either before the same Iustice, or anye other that will certifie the Releasse, which certificate being of Record, wil discharge it, for to releasse it by his déede, is nothing worth. Mar.

And so if it bee *versus cunctum populum*, & *præcipuè versus* A. yet may A. after that sorte

release it (as I thinke) notwithstanding the opinion 21.E.4.40. for albeit ỹ it seeme popular, so ỹ others should haue equal interest wᵗ A in it, yet was it taken specially for his safetie, as the word *Præcipue* doth argue plain. And M. Brooke saith truely, that it is so vsed at this day.

But whether the Recognusance bée at the suite of A. or by the mére motion of the Iustice in the behalfe of A. the Queene can not release or pardon it (before that it bée forfeited) both for the mischiefe that may come to A therby, by Fineux his opinion 11.H.7. 12 & for that the Recognusance being taken according to ỹ cõmon forme, as is before set down, it is not properly a debt to ỹ Queene vntil it bée forfeited, as appeareth 11 H.4.43: 1.H 7.10 But being forfeited, she (and none other) may pardon the forfeiture, for then it is become hir proper debt. Now in these cases, ỹ Recognusance may not bée Cancelled, least peraduenture ỹ Peace was brokẽ (& consequẽtly ỹ Recognusance forfeited) before the time of the Release made, Fitz. Fo. 10. & therfore it shal be best in such cases to send to the Sessions the Recognusance & the Release togither: & that may bée done in a few Lines vnder the Recognusaunce it selfe:

First for the release of the Iustice, thus:

Ego prafatus G.M. qui supra nominatum A.B. ad prædictam securitatem pacis inueniendam ex mea discretione compuli, eandem securitatem pacis (quantum in me est) ex mea discretione 1. die Augusti remisi & relaxaui: In cuius rei testimonium, huic præsenti relaxationi meæ sigillum meum apposui. Dat. &c.

And for the releafe of the Partie before the fame Iuſtice that toke it, thus:

Releaſe by the partie.

Memorandum, quod primo die Augusti, &c. prafatus C. D. venit coram me prafato G. M. & gratis remisit & relaxauit (quantum in se est) prædictam securitatem pacis per ipsum versus supra nominatum A B. petitam. In cuius rei testimonium, ego prafat. G.M. &c. Dat. &c.

But if the releaſe be made before an other Iuſtice which hath not the Recognuſaunce, then this later forme muſt be framed accordingly.

Certifying of the *Recognuſance*, & *Superſedeas*.

Furthermore, if a man be bounde before a Iuſtice of the Peace, to keepe the Peace againſt all the Queenes people, & to appeare at the next Quarter Seſsions, and doe afterwarde procure a *Superſedeas* oute of the Chauncerie, teſtifying, that he hath founde ſuer-

suertie there against al the Queenes people for euer, this will discharge his aparance at the Sessions, because the graunting of this *Supersedeas* is the Acte of the Quéene, which is the fountaine of Iustice, and controlleth all other authoritie. Fitz. Fol. 9. But if that *Supersedeas* should testifie, that he hath foũd Suertie in the Chauncerie, but onelie vntill a certaine day (which day is after those Sessions) then M. Fitzh. thinketh, that his apparance at the Sessions shall not be discharged by the *Supersedeas*. In both these cases also, I would aduise ỹ Iustice of the Peace, to send in the Recognusance and the *Supersedeas* also, if it commeth to his hands, for peraduenture the Recognusance was broken before the *Supersedeas* purchased: or, if it were not, yet he shall be excused, and the Recognusor neuer a whit the more endangered thereby.

Lastly, the death of the Prince dischargeth the Recognusance of the peace. 1. H. 7. 2. *Cur.* So doth the death of the Recognusor: & so also doth the death of him at whose sute it was taken, if so be, that it were made to keepe the Peace against him alone.

Certifying of the *Recognusance*, though it be discharged by death.

But although the Mainpernours or Suerties die, yet the Recognusance liueth: for, if the Peace be brokẽ after their deaths, their

executors shal be charged with it. 21.E.4.40. Neither (in the former cases) is the Recognusance discharged by such death, if it were forfaited before.

And therefore, here againe my counsell is, to sende in the Recognusance to the *Custos Rotulorum*, for other wise, how shall the Iustice of Peace be assured, that he doth not defraude the Queene of a forfeiture, that was growen vnto hir.

Causes of forfaiture, so that the partie shall be compelled to giue new *Suerties*

Thus haue I both bound the party to the Peace, & conueyed the Recognusance from the Iustice of the Peace to the *Custos Rotulorum*, readie to be called vpon at the Quarter Sessions: So that I might forthwith proceede to treate of the good Abearing: But, because I haue tolde you (out of M. Mar. and by 21.E.4.40) that if the Recognusãce of the Peace be forfeited, and that forfaiture bee leuied, so that the Recognusance is vtterly determined, yet (of Discretion) the partie is to bee compelled to finde new Suerties, or else to be sent to prison, because it appereth euidẽtly, that he hath broken peace, and is a stubborn offendor against the law, I thinke it fit to run swiftly ouer some few things that may enfourme a Iustice of the Peace, concerning suche forfaitures, to the end, that he may therevpon compell the offendor accordingly. The

The Condition of this Recognusaunce (of what good forme soeuer you make it) standeth vpon two points: the one, for apparance at a time, the other, for keeping the Peace in the meane while. Of the firste of these I haue said somwhat already in thys Chapiter: concerning the second point, this is generall, that whatsoeuer Act is a breach of the Peace, the doing therof doth also beget a forfeiture of the Recognusance that is made for keeping of the Peace: and what actes shall amount to a breach of the Peace, I will hereafter shew, in the next Chapiter of this Booke, where I shall (to an other end) haue meete place for it. In the meane space, take thus much here.

If a man bee bound to keepe the Peace against A. & doe afterward threaten A. to his face, that he wil beate him, he hath forfaited his Recognusance. And an Action of Trespasse lieth at the Common law against him ý shall threaten one to beate him, as appeereth in diuers Booke cases. 3. H. 6. 18: 37. H. 6. 20. & shall suppose it to be *Contra pacem*. But otherwise it is, if A. be not presente at that threatning, by good opinion. 18. E. 4. 28. yet if (in the absence of A.) he doth threaten, that he wil beate him, & then do afterward lie in await to beate him, he hath in that case also

bro-

broke his Recognusance.22.E.4.35. *per Cur.*

Like forfeiture is it, if he that is bound do but commaund or procure an other to breake the Peace vpon any man, or to do any other vnlawfull acte against the Peace, if that it be done indeede. 7.H.4.34. & Brooke Tit. Peace.20.*tempore*.H.8.

Of the suertie of the *good Abearing*, and where it lyeth.

For closing vp of this parte (concerning the Preuention of the breach of the Peace) it remayneth, that I entreate of the Suertie of good Abearing, which is of great affinitie with that of the Peace, as being prouided for preseruation of the Peace, as that other is: for in the Commission of the Peace, they are both conueyed vnder this one tract of speach, (*Ad securitatem de pace & bono gestu suo erga nos & populum nostrum inuenendum*) against such as doe threaten hurte to mens bodies, or Fier to their houses, which things are now commonly preuented by Suertie of the Peace only. And by the Booke 2.H.7.2. Suertie of the good Abearing is set forth to rest in this point chiefly, That a man demeane hymselfe well in his porte and company, doyng nothyng that may bee cause of the breach of the Peace, or of putting the people in feare, or trouble: and that it doeth not consiste in the obseruation of things that concerne not the Peace. And

that

that it shoulde differ from Suertie of the peace, in this, that where the Peace is not brokē without an affray, or battery, or such like, this Suertie *de bono gestu*, may be brokē by the number of a mās company, or by his or their weapons or harnesse. Herewithall also doe certaine Precedentes of the Kings Bench agrée, which in Suertie of the good Abearing (takē at the sute of some one person) do mingle the wordes *Amodo bene se geret erga Dominum Regem, & cunctum populum suum, & præcipuè erga T.B.* with those other wordes that are commonly put in the Recognusāce for the Peace, as in ỹ new Booke of Entrees Fol. 416. any man may plainely sée.

But all this notwythstanding, me thinketh that a man may reasonably affirme, that the Suertie of good Abearing shoulde not be restrained to so narrow bounds. For first, the Statute (34. E. 3. ca 1.) enableth the Wardeins of ỹ Peace, to take of al thē that be not of good fame (where they shall bee foūd) sufficient suertie & mainprise of their goodabearing towards the king & his people. So that, if a mā be defamed, he may by vertue hereof be bounde to his good Behauiour, at the discretion of the Wardeins and Iustices of the Peace. But then the doubte resteth

resteth in this, to vnderstande concerning what matters this defamation muste be, & that (as I thinke) may be partely gathered out of the saide Statute also. For, after it hath first giuen power to the Wardeins of the Peace, to arrest and chastice offendors (S. against the Peace, Riotors and Baretors:) then it willeth them, to enquire of suche as hauing bene robbers beyond the Sea, were come ouer hither, and would not labour as they were wont: and lastly, it auctorizeth them, to take Suertie of the good behauior of such as be defamed, namely (as I think) for any of those former offences: for so it stãdeth wel togither, ỹ they shall both punishe such as haue alredy so offẽded, & shal also prouide, that the others shal not likewise offẽd. Moreouer, it seemeth to me, that these statutes first (1. Mar. Parl 1. ca. 3.) which giueth this Suertie of good Abearing against such as disturbe a Preacher, then (5 Eliza. ca. 21.) that prouideth the same against the takers of fish in Ponds, or of Deere in Parkes, and lastly (23. Eliza. ca. 1.) whiche graunteth it against such as wilfully absent thẽselues frõ the Church by the space of 12. months, haue this meaning, that a partie (so bound) may afterward forfaite his Recognusance, if he eftsones offend against the said Statutes.

Besids this, you may sæ (admitted by ỹ o-

pinio of ꝯ Court. 13. H. 7. 10.) ꝯ if a man do in the night season, haũt a house that is suspected for Bawderie, or do vse suspitious cõpany, thẽ may the Cõstable arrest him to find suerties of his good Abearing. For, Bawderie is not meerly a spirituall offence, but mixed, and but sounding little againste the Peace of the land 27. H. 8. 14. Fitz. & 1. H. 7. 6.

And therfore, it shal not be amisse at this day (in my slẽder opinio) to grant Suertie of ꝯ good Abearing against him ꝯ is suspected to haue begottẽ a Bastard child, to the end ꝯ he may be forth comming when it shall be borne: for otherwise, there will be no Putatiue father found, when that the two Iustices of the Peace, shall (after the birth, & by vertue of the statute 18. Eliza. ca. 3.) come to take order for his punishmẽt. And for some aduise by the way in cõceiuing rightly this Suspition, marke what M. Bracton writeth: *Oritur suspitio ex fama, & ex fama & suspitione, oritur grauis præsũptio: Fama verò suspitionẽ inducẽs, oriri debet apud bonos & graues, idq; nõ semel, sed sæpius. Oritur etiam suspitio, ex facto præcedente, cui standum est donec probetur cõtrarium: nam qui semel est malus, semper præsumitur esse malus, in eodem genere mali.*

But the further that this bond of ꝯ good Abearing doth extende, the more regarde

thee

there ought to be in the awarding of it: and therfore, although the Iustices of the Peace haue power to grant it, eyther by their own Discretion, or vppon the Complaint of others, euen as they may that of the Peace: yet I wish rather, that they doe not commaunde it, but onely vpon sufficient cause, seene to themselues, or vpon the sute & complaint of diuers, and the same very honest and credible persons.

And here, forasmuch as one Iustice of the Peace (alone, and out of the Sessions) may (both by the first Clause of the Commissiō, and also by the opinion of M. Fitz, & 9. E4. 3.) graunt thys suertie of the good Abearing, (although the common manner bée, that two such Iustices do ioin in that doing, whereof also M. Fitz hath very good liking) I wil not sticke to set forth here, the cōmon formes, as wel of the Precept, as of the Recognisance, for the same: wherein, if I shal vse the names of two Iustices, you muste take that also to be done according to ỳ common fashion, & not of any necessitie in law. For, as I woulde more gladly vse the assistance of a fellow Iustice in this behalfe, if I may conueniently haue it: so (if that may not be had) I woulde not greatly feare (when good cause shal require) to vndertake the

the thing my selfe alone.

The Precept, may haue this course.

GEORGE MVLTON, and *William Lambarde*, two of the Iustices of the Peace of our Souereigne Ladie the Queenes Maiestie in the Countie of *Kent*, To the Shirife of the said Countie, to the Constables of the Hundred of *Wroteham*, and to the Borsholder of the Towne of *Shipborne*, in the said Countie, and to euery of them, greeting: For as much as *A. B.* of *Shipborne* aforesaid is not of good fame, nor of honest conuersatiõ (but an euill doer, Riotour, Barrettour, & perturber of the Peace of our said Souereigne Ladie) as we are giuen to vnderstande by the reaporte of sundrie credible persons. Therefore, on the behalfe of our said Souereigne Ladie we commaund you and euery of you, that you cause the sayd *A B.* to come before vs, or some others of our fellowe Iustices, to finde sufficient suertie and mainprise for his good abearing towards our said Souereigne Ladie, and all her liege people. And if he shall refuse so to doe, &c. as in the Precept of the Peace, with a verie litle chaunge.

The Precept of the good abearing.

Any one of these, is sufficient cause.

The vsuall Recognusance, hath this forme,

The Recognusance of the good Abearing.

MEmorandum, quòd 5. die mensis Iulij, Anno regni Elizab. &c. 23. venit coram nobis Georgio Multon, & Wilhelmo Lambard, & catera, vt antea in Recognitione pacis, vsque ad hoc: Quod idem R.G. personaliter comparebit coram Iusticiarijs dictæ Dominæ Reginæ ac Pacem, &c. ad proximam generalem Sessionem, &c. Et quòd ipse interim se bene geret erga Dominam Reginam & cunctum populum suum, & præcipuè erga I.B. de C. &c. Et quod ipse non inferet nec inferri procurabit, per se nec per alios, damnum aliquod seu grauamen præfato I.B. seu alicui de populo ipsius Dominæ Reginæ de corporibus suis, per insidias, insultus, seu aliquo alio modo, quod in læsionem seu perturbationem pacis dictæ Dominæ Reginæ cedere valeat quouismodo, videlicet vterque prædictorum H.C. & I.S. sub pœna 100. ℔. Et prædictus R. G. sub pœna 200. ℔. quas quidem seperales summas 100. ℔. vterque prædictorum H. C. & I.S. (vt prædicitur) per se, ac prædictus R.G. dictas, 200. ℔. recognouerunt se debere dictæ Dominæ Reginæ, de terris, & tenementis, bonis & catallis suis, & cuiuslibet eorum, ad opus ipsius dictæ Dominæ Reginæ, fieri & leuari, Si contingat præfatum R.G. in aliquo præmissorum deficere, & inde legitimo modo conuinci, &c.

Or by a simple Recognusance, **with this** Condicion **endorced, or vnderwritten.**

CONditio Recognitionis prædictæ talis est, Quod si prædictus R. G. *imposterum se bene gerat, & pacem Dominæ Reginæ conseruet, erga dictam Dominam Reginam, et cunctum populum suum, et nullum damnum corporale &c. Extunc Recognitio prædicta pro nullo teneatur, alioquin in suo robore permaneat.*

Releasse, of the *good Abearing.*

I haue knowen it doubted, whether the Suertie of the good Abearing (commaunded vpon complaint) may be releassed by any speciall person, or no, bicause it seemeth more popular, than the Suertie of the Peace. But if it may (as it seemeth all one to me) then may the forme of such a Releasse be easily made, by that which is before concerning the Peace, vsing the words, *Securitatem de se bene gerendo*, in steade of the wordes, *Securitatem pacis.*

And the like imitation may bee vsed also, for a *Supersedeas* of the good Abearing, if at the least that be grauntable by Iustices of the Peace.

I might here, without breach of Order, prosecute the preseruation of ỹ Peace, by the preuẽting of such as be riotously assembled, & by

handling the Statute of *Northampton*, which seemeth (by plaine speache) to be prouided for preuention of the breache of the Peace also: But bicause the first shall haue his proper place, and the latter is commonly put in vre at this day, after the Peace broken by forcible Entrie, I will spare to speake of any of them, till I come to treate of those matters by them selues.

Of the breach of the Peace without a *multitude*, against the person, and how it may be stayed, or punished by one Iustice of Peace out of the Sessions.

CAP. XVII.

Breache of the Peace without a multitude.

THE preuention of the breach of the Peace hath appeared, aswell in the Suertie of the Peace, as of the good Abearing: Therfore mine owne order requireth, that I nowe declare what one Iustice of the Peace may doe (out of the Sessions) for punishment of such

such as doe breake the Peace.

For, our law is no lesse carefull this way to conserue the Peace, both by staying them that doe any way aduenture towardes the breache thereof, and by punishing them that doe actually enter into the verie violation of the same, than it was prouident to see it preserued before it came to any neare shewe of disturbance, or greater euill.

But because the breache of the Peace, (as the law is taken at this day, whether it be by word, or other acte, (and that also whether it be to the person, or to his goods, or lands,) may be aswell committed by one onely, or by two vpon a side (both which we hold to be done without a multitude, though two in precise speache doe make a number) as by three or more in one companie (which the lawe properly calleth a multitude.) it shall be good to intreate by it selfe first of that breache of the Peace which may be committed without a multitude, and then to prosecute the other. If therewithall we put the Iustice of Peace in remembraunce, that by what way soeuer he may preuent or punishe the breache of the Peace in one person, the same meanes may he also vse against any multitude so offending.

The breache of the Peace that may be

practised against the person, climbeth to the destruction of the person, by sundry degrees: as by Threates, Affray or assault, and violent and malicious striking, and beating, wounding, mayheming and killing. The matter of manacing and threatning is sufficiently touched in the last Chapter.

Affray and Assault.

The wordes Affray and Assault, bee indifferently vsed of many men, euen in our booke cases, but yet there wanteth not a iust difference betweene them in myne opinion.

For, Affray, is deriued of the french *effrayer*, which signifieth to terrifie, or bring feare: and is the more heynous trespasse, for it is in lawe vnderstood to bee a common wrong done, and therfore is inquirable & punishable in the Turne of the Shirife and in a Leet, by 4. H. 5. 10. and 8. E. 4. 5. Otherwise it is of an assault, as it seemeth by those bookes. Yet it may be done, without word, or blowe giuen: as if a man shall shewe him selfe furnished with armour or weapon, which is not vsually worne and borne, it will strike a feare into others that be not armed as he is: and therefore, both the Statute of *Northampton* (2. E. 3. ca. 3.) made against the wearing of armour and weapon, and the Writte thereupon grounded, doe speake of it, by the wordes,

effray

effray del pays, and, *in terrorem populi.*

An Assault, as it is fetched from an other fountaine, namely from the Latine *Assultus*, which denoteth a leaping (or flying) vpon a man: So it can not bee perfourmed, without the offer of some hurtfull blowe, or at the least some fearfull speache. And therfore, to rebuke a Collector with fowle wordes, so that he departed for feare without doing his office, was taken for an Assault, 27. *lib. Assis. plac.* 11. And to strike at a man (although he were neither hurt, nor hit, with the blowe) was adiudged an Assault, 22. *libr. Assis. pl.* 60. For this Assault doth not alwayes necessarily emplie a hitting: and therefore, in Trespasse of Assault and Batterie, a man may bee founde guiltie of the Assault, and yet bee excused of the Batterie: 40. Ed. 3. 40. and 45. Ed. 3. 24.

What actes be breaches of the Peace, and what not.

Manacings then, Affrayes, Assaultes, iniurious and violent handelings, and misentreatings of the person, batteries; malicious strikings, &c. bee breaches of ỹ Peace, and doe drawe after them the forfaiture of a Recognusance, knowledged for the keeping of the Peace.

And therefore (for example) if a man doe imprison an other without warrant, or doe

thrust him into a water (or riuer) wherby he is in daunger of drowning, or doe rauishe a woman against hir will, or doe commit manslaughter or burglarie, or robberie, vpon the person of an other, or do cõmit treason against the person of the Prince, who as he is ỹ head of his people, so are they also wounded in his hurte, he hath broken the Peace. Marr.

But concerning the manacing, assault or batterie of the person of one, this is to be noted by the way, that it is not in all cases a violation and breache of the Peace: for some are allowed to haue priuately, a natural, and some a Ciuile power (or auctoritie) ouer others, so that they may excuse themselues if but (in reasonable manner) they correct and chastise them for their offences, without imputation of any such breache. After the one sorte, the parent is suffered (with moderation) to threaten and chastice the childe within age. By reason of the other sort of power, the husband is not punishable (so that it be not outragiously) if he chastice his wife, ỹ Master his seruant, the Schoolemaister his scholers, & a Gaoler (or his seruant, by his commaundement) his vnruly prisoners. and the Lord may beate his villaine. But these things must neuertheless be done in conuenient place, and therefore not in the presence of the Prince,

Prince, as it is thought 27. lib. Ass. pl. 49. This power of the husbande ouer the wife, seemeth to be permitted by the words of the *Supplicauit* that is sette downe for hir in the Register. 89. when she standeth in neede of the peace against him, where it is said, That he shall be bounde to doe her no corporall harme, but with this exception, *Aliter quàm ad virum ex caussa regiminis & Castigationis vxoris suæ, licitè & rationabiliter pertinet:* Wherein it agreeth with the Ciuil Lawe, which yeldeth to the husband that power, so that he vse it *Modicè*, moderately. And sayth M. Peter Martyr vpon the 1. to the Corinthians. c. 11. ver. 3. The husband may *Corripere & castigare vxorem eadem charitate qua Christus Ecclesiam verberat, nimirũ, vt melior fiat, &c.* The power of the Maister & Schoolemaister, ouer the Seruaunt, and Scholer, is affirmed by M. Marrow, and confirmed by some opinion in the booke 21. E. 4. 6. & 53. Whereunto I may also adde the minde of those that made the Statute (33. H. 8. cap. 12.) concerning malicious striking in the Kings house: for they do therein specially exempt the Maister that striketh his Seruaunt, with his hand, fist, small staffe, or sticke, for his correction for any offence. Yetwbeit in these cases, I doe aduise both husbande and

maister not to prouide so much howe they may escape the breach of a Recognusance or punishment of our lawes, as to forsee that they keepe the lawe of God, and doe nothing against honestie: the one as knowing that the wife is his owne flesh, and the other as considering that he also hath a Maister in heauen.

Euerie man also maye take his kinsman that is madde, and may put him in a house, and binde and beate him with roddes, without breache of the Peace. 22. lib. Ass. plac. 56.

A Constable or other Officer, or any other, being of their companie, that shal be driuen to strike any person, for the better executing of their Office or charge (as in many cases they may lawfully doe) breaketh not the Peace nor shal be in any perill of forfeiting any Recognusance of the Peace, by reason of any such assault or batterie, as may bee well inferred vpon the booke cases 17. E. 4. 5: 2. E. 4. 6. & 8: 4. H. 7. 1: & 14. H. 7. 8. For suche Actes bee iustifiable. And see for this purpose also M. Stamforde. Fo. 13. 14. 15. Besides this, if a man be inforced to repulse violence (done vnto his owne person, or to the person of his wife, father, mother, childe, kinsman, maister,

ser, seruant, or to his goodes being in his possession,) either by threatning or striking againe: his so doing is also iustifiable, as may be seene in Marr. 33. H. 6. 18: 19. H. 6. 31: 9. E. 4. 48: & 35. H. 6. 50. But a Fermer or Tenant cannot iustifie suche an acte in defence of his Landlorde, nor a Commoner in defence of the Maior, or Bayliffes of a corporate Towne.

If one man also hurt or kill an other at Fence play, or at the Tilte, Turneament, or Barriers (in presence of the Quéene, and by hir licence) or in a wager of Battell for the triall of a cause according to the auncient Lawes of this Realme, it is no breach of the Peace at all, Marr.

Thus farre of those breaches, that maie bring daunger to a Recognusance of the Peace: for some others there bée, whiche are in a degrée against the Peace, so that an Enditement *Contra pacem* may bée founde vpon them, but yet no forfaiture of such a Recognusance shall ensue of them.

Breaches of the Peace, that make no breache of bond for the Peace.

As if a man (so bounde) doe take a mans goodes wrongfullie, (so that it bée not from his person) or doe Rauish a Warde from the possession of his Garden: or do a Trespasse in an others mans corne, or grasse: or do Disseise

ſeaſſe an other of his landes: or do enter into landes, where he ought to bring his Action, it will breede no forfaiture of his bonde.

Therefore let vs nowe come to the pacifying and puniſhing of the Breache of the Peace vpon the perſon, by one Iuſtice of the Peace out of the Seſſions.

A Iuſtice of the Peace, is vndoubtedly (for this purpoſe) endowed with no leſſe power, thã euerie Priuate man, or any Conſtable hath: as it is plaine by 14. H. 7. 8 & 9. E. 4. 3. And therefore it may not be thought *Heterogeneum* (or beſides my purpoſe) if I ſhal ſhew what both a Priuate man and Conſtable may do in this caſe: yea rather I chooſe to vtter this matter vnder their names, to ỹ end that I may with ỹ one labour bewray the duties, both of them and of the Iuſtice of the Peace him ſelfe in this behalfe.

The duty of a ſtander by at an *Affray*.

The Lawe loketh, that euerie Priuate perſon, whom it ſhall happen to be preſent at an Affray, Aſſault, or Batterie (for now I will confounde thoſe names) ſhould doe his parte to departe them that fight togither: and it doth (to that ende) enable him alſo with ſome portion of auctoritie.

To parte them.

For, if two be fighting, euery Stander by, may lawfully, and ſhall do well to put them in

in sunder, and if he take hurt thereby, he shal haue his remedy by Action against him that did the hurt.

But yet he (being but a Priuate man) may doe no hurt, if they resist him, for they also shall then haue Action for it against him: wherein his case differeth (as you shall see anons) from the case of an Officer.

And if an Affray be in the high streate, and one commeth towardes it with harnesse, or weapon, to take with the one partie, euerie man that seeth it may stay him til the Affray bee ended.

Any man also may stay the Affrayours, vntill the storme of their heate be calmed, and then may he deliuer them ouer to the Constable to imprison them, till they finde Suertie for the Peace: but he him selfe may not commit them to prison, vnlesse the one of them be in perill of death by some hurt: for then may any man carrie the other to the Gaole, till it be knowen, whether he so hurt, will liue or dye, as appeareth by the Statute 3.H.7.ca.1. To stay them.

But as the keeping of the Peace is more speciallie recommended to the charge of Iustices of peace, Cōstables, petit-Constables, Borsholders, Tithing men, and such like Officers: so be they also therefore armed with

a

The Officers duetie in an *Affray.*

a larger measure of auctoritie: And therefore if a Constable, or such other Officer doe see a man, endeuouring to make an Affray, he may cõmaunde him to auoide vpon paine of imprisonment: and if the Affray bee great, or dangerous, he may make Proclamation, and may commaunde the parties to prysons for a small time, till their heate be passed ouer, & then he must deliuer thẽ without any fine taking. But if two doe vse onely hoate wordes, one against the other, the Officer may laie no handes vpon them, vnlesse they doe also drawe weapon, or doe otherwise offer to strike: If they once fight togither, then may the Officer departe them, and if he happe to bee hurte in that doing, he maye haue an Action of Trespasse for it: but if any of them bee hurte by him in the resistance, no Action lieth for them: For, the Officer ought to doe his beste to departe them: in so muche as if it bee presented at the Sessions of the Peace, that he was present at an Affray, & did not vse his indeuour to put them in sunder that fought togither, he shall bee fined for it: Otherwise it is, if he were not present, but were onely tolde of the Affray. Marr.

If any of the parties bee in daunger, by reason of a hurte receyued in the Affray, then ought

ought the Officer arrest and carrie the other to the Gaole, vntill he shall finde suertie to appeare at the Gaole deliuerie. Fitzh. 72:38. E.3.6. & 22:lib.Ass. pl.56.

And if two men bee fighting in a house (the doores shut) then may the Officer breake open the doores to see the Peace kept, though neyther of them haue taken hurte.

And yet when the Constable hath taken an Affrayor, he may not imprison him in his house, but in the Stockes, and that not aboue suche a reasonable tyme as he may prouide to conuey him to the Gaole till he find suertie of the Peace. 3.H.4.9: & 22.E.4.35.

And herein he differeth from a Gaoler, or the Shirife (who hath ỹ charge of the Gaole) for he may make a Gaole of his house: and so cãnot a Constable or Iustice of the Peace doe. And by the Statute (5.H.4.ca.10.) the Iustice of Peace must sende his prisoners to the common Gaole.

If one doe make an Affray vpon the Iustice of Peace, Constable, or suche other Officer, he maye not onely defende him selfe, but maye also apprehende the offendour, and sende him to the Gaole, till he wil finde suertie of the Peace. 5.H.7.6. And the Iustice, or Constable maye (if nede bee) commaund assistance of the Queenes people, for

for the pacifying of an Affray, 3. H. 7. 10.

If he that maketh an Affray do flie into a house when the Iustice of Peace (or Constable cõmeth to arrest him, they may (in fresh suite) breake open the dores, and take him, Mar. or if he flie thence, they may make fresh suite and arrest him, though it be in an other Countie, by the opinion of some men. 13. E. 4. 9. And it shoulde seeme (by the reason of that Booke) that in this case also, they may breake open the dores to apprehend him, because the Prince hath an interest in the matter, and then a mans house shall be no refuge for him, as it shoulde be in Debt or Trespas, where the interest is but one lie to some particular partie.

Now, if the Constable do arrest one, that hath hurt an other, and do voluntarily suffer him to Escape, and then he that was hurte dieth thereof within the yeare and day, the Constable shal make a great Fine, and that to the valewe of his goodes, in the opinion of some. 11. H. 4. 12. & Stanford. 35. 1. But the offence shall not haue suche Relation to the stroke, as to make the escape to become Felonie thereby. *Commentar. Plowd.* 263.

Of

Of the breach of the Peace without a multitude, or with a multitude, by forcible entrie into landes or tenements &c. And what one Iustice of the Peace out of the Sessions may doe therein.

CAP. XVIII.

BEfore the troublesome reigne of King Richard the second, it seemeth that the common Law permitted any person which had good right or title to enter into any lād, to winne the possession therof by force, if otherwise he could not haue obtained it. And still at this day, if in a common Action or enditement of Trespaile for entring into any land, the Defendant will make Title therevnto, the whole matter of the Force alleadged against him wil rest altogither vpon the validitie of his Title, as appeareth 7 H.6. 13. and 40. And a man maye also at this daye retaine wyth force his owne goodes and cattailes agaynste an other. 19 H.6. 31. & 9. E.4. 18. But after the rebellious insurrection of

the villeins & other of the commons (which happened in the fourth yeare of that Kinges reigne. The Parliament in 5 R.2.cap.7. (thinking it necessarie to prouide against all occasions of any further vproare or newe breache of the Peace) did ordaine among other thinges, That from thencefoorth none shoulde make any entrie into any landes or tenements, although his entrie into the same were lawfull, but onely in peaceable and easie maner, and not with strong hande, nor with multitude of people, vpon paine of imprisonment, and to be raunsommed at the Kings will.

But because this Statute gaue no quicke remedie in this point, nor any special power therein to the Iustices of the Peace of the countrie, whereas the experience of that busie time required a great deale more spéede in suppressing such disorder: After that they had in 13. of that King c.7. Stat.1. taken order that Iustices of Peace shold be made of new in all the Counties of England of the most sufficient Knights, Esquiers & men of law of the same Countie. And that they should be sworne to keepe & put in execution all Statuts & ordinaunces touching their offices. Thē in 15 R.2.c.2 they caused it to be further enacted, That when such forcible entrie

should

ſhould be made into landes or tenementes, or into Benefices, or Offices of the Church, and complaint thereof come to any Iuſtice of the Peace, he ſhould take ſufficiēt power of the Countie, and go to the place where the forcible entrie was made: & if he found any that held ſuch place forciblie after ſuch entrie made, the ſame ſhould be taken and put in the nexte Gaole, there to abide conuicted by the Recorde of the ſame Iuſtice, till they had made fine, and raunſome to the King, And that aſwell the Shirife, as all others of the Countie, ſhoulde attende vpon the ſaide Iuſtice, to go and arreſt ſuch offendours, vpon paine of impriſonment, and to make fine to the King.

Now againe, for aſmuche as this laſte Statute **did not extende to thoſe that entred** Peaceablie, **and then helde with** Force: **nor againſt the offendors if they were remoued before the comming of the** Iuſtices, **nor yet any paine therein ordained againſt the** Sherife **that did not obey the preceptes of the** Iuſtices **in this behalfe: it was not onelie ordayned by a thirde** Acte (**made** 8. Hen. 6. cap. 9.) That the ſayde former Statutes ſhoulde beholden and duelye executed, **But it was adioyned alſo thereunto,** That if anye from thence-

forth shoulde make suche forcible entrie into lands, tenements, or other possessions, or should them holde forcibly, after complainte thereof made wythin the same Countie to any of the Iustices of the Peace there by the parties greeued, that the Iustice so warned should in conuenient time cause the last said Statute duely to bee executed at the costes of the sayde party.

And whether the persons (making suche entries) were present, or auoided before the Iustices comming, the same Iustices (or Iustice) in some good towne next to the said tenements, or in some other conuenient place at his discretion, shoulde haue power to enquire by the people of the same countie, as well of them which made suche forcible entries into landes or tenementes, as of them whiche held the same with force: And if it be found before any of them, that any doth contrary to this Statute, then the sayd Iustices (or Iustice) shall doe the saide landes or tenements to be reseised, and shal put the partie (so put out) in full possession of the same. And when the saide Iustices (or Iustice) make suche enquirie, they shall directe their Precept to the Shirife, commaunding him on the Kings behalfe, to cause to come before them and euerie of them

them, ſufficient and indifferent perſons, dwelling nexte aboute the ſame landes or tenementes, whereof euerie man ſhall haue landes or tenementes of the cleare yerely value of fourtie ſhillings at the leaſt, and the Shirife ſhall returne twentie ſhillings in iſſues vpon euerie one of them at the firſte Precept retournable, and at the ſeconde fourtie ſhillings, and at the thirde fiue pounde, and at euerie daie after, the double. And euerie Shirife of Countie, and Bayly of Fraunchiſe, that ſhall not duely make execution of the ſaide Precepts, ſhall forfaite to the King twentie poundes for euerie defaulte, and ſhall moreouer make fine and raunſome to the King. And aſwell the Iuſtices or Iuſtice aforeſaid, as the Iuſtices of Aſsiſes, may heare and determine ſuch defaultes of Shirifes or Baylies, aſwell by Bill at the ſuite of the partie grieued for him ſelfe, as for the King onely, by way of Enditement, and vpon ſuche due attaynder, he whiche ſueth for himſelfe and for the King, ſhall haue the one moietie of the ſaide twentie poundes togeather with his coſtes and expenſes: and ſuche Proceſſe ſhalbe agaynſt ſuche ſo attaynted, as lieth againſt anie perſon endited, or ſued, by writte of Treapaſſe with force and Armes

againſt the Peace. And the Maiors, Iuſtices of the Peace, Sheriffes and Bayliffes, that are in Cities, or Bourowes (hauing fraunchiſe) ſhall haue like power in the articles aforeſayde, as the Iuſtices of Peace, and Shirifs in the Counties haue.

But they which kepe by force their poſſeſsions in any lands or tenements, whereof they or their aunceſters, or they whoſe eſtate they haue therein, haue continued their poſſeſsion in the ſame by three yeares or more, ſhall not be endamaged by this Statute.

This laſt Statute I haue the rather exemplified at large, becauſe it contayneth a full direction in this buſineſſe, yet becauſe I haue ſeene ſome other things that tende to ſome little explanation, of ſome of the pointes of the ſame, which be good to be conſidered of, I thinke that they alſo may be well beſtowed here.

This Statute therefore enableth any one Iuſtice of the Peace to deale in this matter vpon occaſion geuen, and is made, as well againſt ſuch as enter with force, as againſt thoſe that enter Peaceablie, and then holde in with force. But whether the Iuſtice be bounde to examine the goodneſſe

of

of his title that entreth, and according to the same to make or deny restitution, it hath bene oft times made a question, which surely in mine opinion shoulde carrie no great doubt with it. For seeing that the Statute 5. R. 2. cap. 7. prohibited all entries with force although they were otherwise lawefull, and the Statute 15. R. 2. ca. 2. rehearsing the same, geueth authoritie to euerie Justice of Peace vpon any suche forcible entries, presently to committe the offendors there found to the Gaole, and this Statute meaning to supplie some other defectes in the former, geueth speciall remedie to the partie greeued by the aide of the same Justice, by restoring of him to his possession againe: I see not why the Justice of Peace (who perhappes shall haue but little skill in Lawe to discerne and iudge of the Title, and yet be a fitte man to suppresse all force, and able enough to restore a possession) shoulde be tyed to the discussing of the right or title of either of the parties. And therefore 22. H. 6. 18. admitteth this case, That if A. shoulde disseyse B. and B. shoulde enter agayne and put out A. by force and strong hande, yet shoulde A. be restored to his possession at the handes of the Justice of Peace, although his first

entrie were very vnlawfull. And that thereupon notwithstanding the restitution made, B. may haue an Assise, or else may enter vpon him againe, so as he doe it in peaceable manner. And I doe little doubte, but that a Lessee for yeares, or a Copieholder beyng put out with force, and the Lessor or Lorde disseised thereby, the Lessee or Copieholder ought to haue restitution by the helpe of a Iustice of Peace vpon this Statute.

Complaint. Now whereas the wordes bee After complaint &c. that dothe not alwaies inforce a necessitie of Complaint, by the partie grieued. For if a forcible entrie bee committed, the Iustice may inquire of it, and also make restitution, vpon any informacion or other knowledge thereof, though no complaint be made vnto him by the partie greeued, as it is holden 7. E. 4. 18.

It seemeth further that it should not bee altogither requisite to the punishing of the offenders by imprisonment and fine, that the partie greeued shoulde be actually put out of possession. For all the saide Statutes doe specially prohibite the forcible entrie it selfe yet to haue restitution vpon this Statute, the putting out must needes be founde also. And therefore if ỹ case be that after the death of A. a stranger entreth into his landes and holdeth

holdeth the same by force against his heire, before he had gotten any possession in deede, the heire of A. in this case (sayth Marr.) shall neuer haue restitution because he neuer had any other possession than a possession in law, but no actuall possession.

And by his opinion also, If a man claimed a rent or common in lande, that is so holden with such force that he can not distraine for the one, nor vse the other, this is a force remoueable by this statute, but the partie can haue no restitution here made vnto him.

One person alone may commit this forcible entrie, so also may he be punishable for deteining of the possession by force. And it seemeth that this entrie or deteyning must be with some offensiue weapõs, as with bowes, billes, swordes, stones, harnesse or such like, yet Marr. is of opinion, that if the Iustice of Peace come and finde the doores shut, and they within denying him to enter, this is a deteyning with force, and he may thereupon commit them. Entring or holding with force.

If it be founde that diuers persons haue made a forcible entrie to the vse and behouke of a stranger that is absent, although he doth after agree vnto it, but entreth not him selfe, this is no force in him, for sayth 2.H.7.16. A forcible entrie can not be without an entring

actually,

Enquirie. The enquirie is to be of Iurours that muſt haue landes or tenements of the yearely value of xl. ſ. by yeare at the leaſt aboue all repriſes. And Marr. is of opinion, that if it be not ſo, the partie grieued may ſtay the reſtitution for that cauſe. But how he can hinder the reſtitution that the Iuſtice of Peace is to make vpon ſuch a verdit, otherwiſe than by cauſing the record thereof to be remoued into the Kinges Benche I doe not well perceiue.

Reſtitution. After the forcible entrie, or the deteyning with force, or both be founde by the enqueſt, the Iuſtice of Peace ought either by himſelfe to put the partie grieued in poſſeſſion againe, or els he may direct his precept to the Shirife to reſtore him. But if that Iuſtice of the Peace which made the enquirie, doe happen to dye before he make reſtitution, whether the other Iuſtices of the Peace may at their Quarter Seſſions, hauing the recorde of that Enquirie deliuered vnto them, award a writ of Reſtitution to the Shirife or no, it may be ſome doubt, (albeit Marr. be of that opinion,) bicauſe it ſeemeth that they haue no authoritie to deale with that Recorde. But this is certain, that if that preſentment were receiued into the Kinges Benche, the partie grieued, then might well enough haue reſti-

restitution awarded him out of that Court. 7.E.4.18. & 4.H.7.18.

And in some cases there may be double or crosse restitution made, sayth Marr. As if it be found that I my selfe was seised vntill A disseysed me with force, whome also B. disseised w̄ like force: in this case if A. haue restitution against B. thē may I also pray my restitution against A. But if I first haue restitution, then (sayth he) A. hath lost ẏ aduantage of his.

And if it were found by one Inquirie that I my selfe was seised, vntill A. disseised me with force, and by any other Iurie found that the sayd A. was seised vntill by me disseised with force, then euery of vs (sayth he) may pray restitution against the other. And he shall be in the worst case that hath the first restitution, for the other also (sayth he) shall haue his restitution after.

If two Iointenants were put out by force and one of them onely would Complaine & sēke for restitutiō, though this special matter were founde by the Inquest, yet shoulde he that sued for it haue restitution: And this would not worke any seuerance of the Ioinsture betwene them. Marr.

Restitution is not to be made but onely to the partie which was put out. And therefore if the father were put out by force

force, and dyeth after enquirie and before restitution, his heire shall neuer haue restitution vpon this statute, no more than the executors of Lessee for yeres that was put out, shall haue any restitution, Marr.

If a writ of restitution be awarded to the Shirife, and he returneth that he is so resisted that he can not bring the partie into his possessiõ, he is to be amerced for that returne, sayth Marr. for he may take the power of the countie to execute the precept.

The case may be such, that the force is not punishable by any Justice of Peace, vpon this statute, nor any restitution can be made at all. As if the house or lands be in one Coũtie, and the men (forcibly arrayed for defence thereof) be in a house or lands, that is in the Countie adioyning, no Justice of Peace can medle with this matter vppon this Statute. No more can they if the place it selfe extend into two Counties, and the parties remoue their force (before the comming of the Justice) out of that Countie wherein he is a Justice, Mar. For Justices of the Peace haue no power out of their owne Counties, but in certeine especiall cases giuen vnto them by Statutes.

Three yeares possession.

Lastly, vpon the prouisoe in the latter end of this Statute concerning their holding

with

with force, which haue had possession by the space of three yeares or moe, there ariseth some matter of doubt in mine opinion, how farre the benefite of that clause ought in good equitie to be extended. For I finde a difference taken 14. H. 7. 28. betwene an Action brought vppon the statute, & an Inditement founded thereupon. In the Action (sayth M. Fineux) it will be a good barre for the Defendant to pleade, that he hath kept possession by three yeares space, yea though he hath done so all that time by force. But vppon an Inditement, possession by twentye yeares space togither by force, shall be no plea at all against the king, nor hinder the partie of his restitution out of the Kings benche. Which opinion hath bene and still is receiued for lawe, as I haue learned. Yet if we consider well the reason of the inserting of that prouisoe vnto the Statute, perhaps the diuersitie will not fall out in all respectes to be so reasonable, as it seemeth at the first shew to be plausible. For when this statute had in generall tearmes brought within the penaltie of 15. R. 2 ca. 2. all such as should deteine any lands or tenemẽts with force, after that they had entred into the same in peaceable maner: yet was it thought conuenient (as in truth it was) to except out of that punish-

ment

mẽt all those, who hauing made their entries in peaceable maner, especially vpon good title, had continued that possession by three yeares space, before any forcible deteyner of ỹ same. And therefore such persons bee not onely to take aduauntage of that clause in actions brought against them vppon the statute (in myne opinion,) but against the King, to eschue the punishment of a forcible defence committed, and against the partie grieued, to keepe him from any restitution at the handes of the Iustice of the Peace also. And therefore M. Marr. speaketh generally, that if the three yeares possession bee founde by the Inquirie, then no forcible deteyners shall haue the aduantage of it, against the King also, which seemeth to be a very reasonable opinion, especially (as I haue sayd) in case where the deteynors did enter peaceably and by good Title. For so farre extendeth the speache of all the Iustices opinions, 22. H. 6. 18 And otherwise I see not how that may wel stande which M Fineux him selfe afterward 21. H. 7. 39. affirmeth, saying, that A mans house is his Castle, which he may defende with force against any priuate armie that shall inuade him. Neuertheless in the principall case 14. H. 7. 28. being as it is there put of a wrongfull entrie, and that with force,

and

and of the continuance of that possession with force also by diuers yeares, I see no great reason why such a disordered person should by any continuing of his wrong, take benefite by this prouisoe eyther against the King vpon an Inditement, or against the partie grieued to stay his restitution, or to conclude him in an action brought vppon this Statute.

But nowe, whether such as bée Indited may bée admitted to their Trauers before the same Justice of the Peace or no, & where or before whom this Trauers is to be made or receyued, I will not take vppon me here to discusse. This séemeth vppon both the Statutes to be playne, that such persons as the Justice of the Peace doth finde and sée, continuing the force at his comming, may be immediatly committed by him to the next Gaole without any gainesaying, there to remayne conuict of that offence by the onely recorde of the same Justice, till they shall haue made fine and raunsome to the King for the same. But vppon the enquirie, it séemeth that he hath no further power giuen vnto him by this last statute, than to make restitution onely. And therefore the surest waye in this case is, to deliuer ouer the Indite- Tender of Trauers.

Inditement either to the *Custos Rotulorum*, or to the Justices of Gaole deliuerie, as in other cases they were in olde time by the statute of 4. E. 3. ca. 2 appointed to doe, or rather into the kings Benche, referring the further proceeding thereupon vnto their power and authoritie.

Assessing the fine.

And againe, as touching the Assessement of the fines vppon the offendors by him committed to the Gaole, some doe thinke, that the selfe same Justice that committed them, should haue sufficient authoritie also to put them to their fine, and vpon pledges founde for the payment of it, to deliuer them out of prison againe. For (say they) he is the onely Judge of that offence, and onely hath the custodie of that Record, and knoweth best how to rate the fine according to the greatnesse of the trespasse. And as he is bounde by his othe and dewtie, (in their opinion) to make out estreites of all Issues and amercements growing due to the Queene by such an Inquirie, so ought he also to estreit this fine & send it vp into the Exchequer, that from that Court the Shirife may be commaunded to leuy it to the Queenes behoofe. Yet to auoide all doubt, it seemeth here also y better course, to referre that matter to the Quarter Sessions, or rather to the comming of the Justices

ces of Gaole deliuerie into the Countrie.

These things thus saide, I will (for the more complete furniture of the Iustice of the Peace in this seruice againste forcible Entries) arme him with these fewe precedents following.

The *Mittimus* to the *Gaole*, testifying the holding with force.

ROBERT Bing, one of the Iustices of the Peace of oure Soueraigne Lady the Queenes Maiestie within hir Countie of *Kent*, to the keeper of hir Maiesties Gaole at *Maidstone* in the said Countie, and to his deputie & deputies there, and to euery of them, greeting. Vpon complaint made vnto me by *C.D.* of *Ightham* in the said countie Yeoman, that one *A. B.* &c. and other Malefactors had forcibly, and with strong hād entred into his house, &c. in *Ight.* aforesaid, & him expulsed, and the same yet hold with force, I wente this present daye to the said house, and there found the said *A.B.* &c. forcibly holding the saide house, &c. wyth bowes and arrows, coates of plate, and long piked staues, to the great disturbance of hir Maiesties Peace, and againste the forme of the Statutes in that behalfe ordained: And therfore I send you by the bringers hereof, the bodies of the said *A.B.* &c. conuicted of

the said forcible holding by my Recorde, commaunding you and euery of you, in hir Maiesties name, that yee receiue them, and safely keepe them in your said Gaole, vntill that they shal haue made their fine & raunsome to the Queene, & be deliuered thence by order of the Law: hereof faile ye not vpon the perill that wil fall thereon. Yeouen at *Wrotham* vnder my Seale, this 2. daye of September in the xxiij. yeare of our saide soueraigne Ladie Elizabeth, &c.

And for his *Inquirie*, vpon suche a force, as foloweth:

The Precept to the Shirife.

RObertus Bing, vnus Iusticiariorum Dominæ Reginæ, ad pacem in comitatu Kanciæ conseruandã assignatorũ, vicecomiti eiusdẽ comitatus salutem: Ex parte dictæ Dominæ Reginæ tibi mando & præcipio, quod venire facias coram me apud Ightham *in comitatu prædicto, 20. die Septem. proximo futuro. 24. probos sufficientes & legales homines de Vicenete de* Ighthã *prædicta, quorum quilibet habeat xl. sol. terrarũ & tenementorum vel reddituum per annum ad minus vltra repriſas, ad inquirẽdum super sacramentũ suum, si* A.B. *& alij malefactores et pacis dict. Dominæ Reginæ perturbatores, in vnũ messuagium & decem acras terræ & alia tenemẽta de* C.D. Yeoman, *in* Ightham *prædicta, manu forti,*

forti, super possessionem prædict. C.D. ingressi sũt, aut eadem cum fortitudine adhuc tenent & occupant. Et videas, quod super quolibet Iuratorũ in hac parte impanellandorũ xx sol. de exitibus ad primũ diem returnes, & hoc nullatenus omittas sub pœna xx. lb. quam noueris te incursurũ, si in executione præmissorũ tepidus aut remissus fueris: Et habeas ibi tunc hoc præceptum. Teste me præfato R.B. 10. *die Septem. Anno regni dictæ Dom. nostræ Eliz. dei gatia Angl. Fran. & Hib. Reginæ, fidei defensoris, &c.* 23.

And vppon default of apparance of these Iurors, an *Alias* may be awarded, & after y *Plures* infinite, til they come, but so that at the day of the second Writ rl. f. must be returned, at the third Writ C.f. and at euerie day after, the double.

The *Inquirie* (or *Verdit*) of the *Iurors.*

INquisitio pro Do. Regina, capta apud Ighthã, *in comit. Kanc.* 20. *die Sept. An. reg. Do. nostræ Eliz. &c.* 22. *super sacramentũ.* A.D.E.F.G.I.L. M. *&c. corã* R.B. *vno Iusticiariorum dict. Do. Reginæ ad pacem in dicto comitatu conseruandã assignatorũ. Qui dicunt, quod vbi* C.D *de* Ight. *predict.* Yeomã *diu legitimè & pacificè seisitus fuit in dominico suo vt de feodo de vno messuagio, &c. cũ pertinẽtys in* Ight. *predict. & possess. suã sic cõtinuauit, quousq;* A.B. *de &c. & alij &c.* 1. *die Sept. vlt. elapso, vi & armis, viz. cũ baculis, gladijs, arcubus, sagittis, loricis, galeis, gunnis,*

in meſuagium prædictum, &c. intrauerunt, ac ipſum C.D. *inde expulerunt, & idem meſuagium &c. à prædicto die &c. vſq; ad dē &c. cū huiuſmodi fortitudine & potentia tenuerunt & occupauerunt, in magnam pacis dict. Dom. Regina perturbationem, ac contra formam ſtatuti in tali caſu editi & prouiſi, vbī nullus eorum, nec aliquis alius cuius ſtatum ipſi aut aliquis eorum habuerunt aut habuit, aliquid in eodem meſuagio &c. aut aliqua inde parcella, habuerunt aut habuit infra tres annos proximos ante ingreſſum ſuum prædict. neq; alio tempore præcedente, ad notitiam Iuratorum prædictorum.*

The Warrant for *Reſtitution*, to the *Shirife*, if the *Iuſtice* himſelfe will not make reſtitution.

Rob. Bing, vnus Iuſticiariorum &c. aſſignatorum, Vicecomiti eiuſdem comitatus Salutem: Cùm per quandam Inquiſitionem patria coram me captam apud Ightham *in comitatu prædicto* 20. *die Sept. &c. ſuper ſacramētum ac per formam Statuti in huiuſmodi caſu prouiſi cōpertum fuerit, quod* A.B. *&c. & aly &c. die &c. anno &c. in quoddā meſuagiū &c. Chriſtopheri* D. *&c. in* Ightham *prædicta, vi et armis ingreſſi fuerint, ac ipſum* C.D. *inde expulerunt, et prædict. meſuagiū, &c. à prædicto die, &c. vſq; ad*

diem

diem &c. manu forti, & cum potentia tenuerunt & occupauerunt, prout per Inquisitionem predictã plenius liquet de Recordo: Ideo ex parte dict. Dom. Regina tibi mando & precipio, quod ad hoc debite requisitus, vnà cum posse comitatus tui (si necesse fuerit) accedas ad mesuagium & cetera premissa, ac eadem cum pertinentijs reseisiri facias, & prefatum C.D. ad, & in, plenam possessionem suam inde, prout ipse ante ingressum predict. fuerat, restitui, & mitti facias, iuxta formam dicti statuti de ingressib' manu forti factis editi & prouisi: & hoc nullatenus omittas, periculo incũbente. Teste me prefato, &c,

The execution of a *Writ* vpon the Statute of *Northam.*

I will now come to the performance of ỹ promise which I made, cõcerning ỹ statute of *Northampton*: for that also is now of late dayes chiefly put in vre for the punishment of Forcible Entries. That Law (in effecte, & for this purpose) is thus: No man whatsoeuer (except the Kings seruants and Ministers, in his presence, or in executing his precepts, or their Offices, and such as shall assist them: and except it be vpon crye, or proclamation made for armes, to keepe the Peace, & that in places where such actes do hapẽ) be so hardy to come before the kings Iustices, or other his Ministers doing theyr offices, with force and armes: Nor bring any force in affray of the Countrie: nor goe,

nor ride armed, by night, or by day in faires or Markets, or in presence of the Iustices or other ministers, nor in any place elsewhere, vpon paine to forfeite his Armoure to the King, and his bodie to prison at the Kings pleasure. 2 E. 3. ca. 3.

Vpon this Statute, he that is put out, or holden out of his land with force, vseth to haue at this day a Writ directed out of the Chauncerie, eyther to the Shirife onely (as M. Fitz. in his Nat. Br. Fol 249. rehearseth it, for I finde it not in the Register of Writs) or else *Custodibus pacis, ac Vicecomiti, & eorũ cuilibet* (as the common maner is) commanding, that Proclamation be made vpon this Statute, and that if any bee afterward found offending against the same, that then they shall be committed to Prison (there to remaine vntill that some other commaundement be giuen concerning them) and that their armour and weapon shall be prised, and the same aunswered to the vse of the Quéene.

But, forasmuch as that Iustice of Peace, (to whome this Writ shall be deliuered) is to make execution of the same, as a Minister onelie, and is to Certifie hys dooing therein, I thinke good to lend him these few helps towards it.

At

At his comming to the place, where the force is supposed by this Writ he may cause the Oyes for silence to be made, with this, or such an other Proclamation.

The Queenes Maiesties Iustice of hir Peace straightly chargeth, and in hir Maiesties name commaundeth all and euerie person to keepe silence, whilest hir Maiesties Writ vpon the Statute made at *Northampton* in the 2. yeare of King E. 3. hir noble Progenitour, deliuered to the saide Iustice, be read, and Proclamation be thervpon made accordingly.

Then may he reade the Writ, or declare the effect thereof in English.

After that let the Oyes bee made againe, and therevpon may this Proclamation follow.

Hir Maiesties said Iustice, doth in hyr Highnesse name, and by vertue of hir sayde Writte, straightlye charge and commaunde, that no manner of person, of what estate, degree, or condition soeuer, nowe being wythin the house of *B.* &c. named in the said Writ, shall goe armed, nor

keepe force of armour or weapon, nor doe any thing there, or elsewhere, in disturbãce of hir Maiesties Peace, or in offence of the said Statute, vpon the paines of loosing his said armour & weapon, & of imprisoning of his bodie at hir Maiesties pleasure.

God saue the Queene.

This done, the Iustice may enter, and search whyther there be any force of armor or weapon worne or borne againste this Proclamation: or otherwise he may enquire thereof by a Iurie (for so the Writ it selfe doth warrant him to do) and if any such be founde, he ought to imprison the offendors, and to seise and praise the armoure and weapon so foũd with them. But if (vpõ the Proclamation made) they do depart in peaceable maner, then hath he no warrant by the Writ to commit them to prison.

And what weapons be offensiue in the case of this Statute, he shall the better discerne, if he take with him these fewe lines drawen oute of M. Bractons booke, Fol. 162. where he speaketh of the like violent disseisine, thus: *Est etiam vis armata, non solum si quis venerit cum telis, verumetiam omnes illos*

illos dicimus armatos, qui habent cum quo nocere possunt. Telorum autem appellatione, omnia in quibus singuli homines nocere possunt, accipiuntur: Sed si quis venerit sine armis, & in ipsa concertatione ligna sumpserit fustes, aut lapides, talis dicetur vis armata. Si quis autem venerit cũ armis, armis tamen ad deijciendum non vsus fuerit, et deiecerit, vis armata dicitur esse facta. Sufficit enim terror armorum, vt videatur armis deiecisse.

But nowe let me shew him a Forme of Certificat (or returne) of this Writ into the Chauncerie and then make an ende.

Upon the Writte it selfe these words may bee Endorsed.

Executio istius Breuis patet, in quadam Scedula eidem Breui consuta.

And the Scedule may bee thus;

EGo Wilhelmus Lambarde *vnus Iusticiariorũ pacis Domine Regine in comitatu Kancie, certifico in Cancellariam dicte Domine Regine, quod virtute istius Breuis mihi primo deliberati, publicè proclamari ex parte dicte Domine Regine feci, apud* B. *cuius in dicto Breui fit mentio (tali die &c) prout in dicto Breui precipitur: Et quod quidam* A.C. *&* D.E. *de* F. *in comi-*

tatu prædicto Laborers, *prædictam proclamationẽ parupendentes, post proclamationem sic factã armati iuerunt, ac armatam potentiam duxerũt, scilicet duas galeas, vnum arcum, & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dictæ Do. Reginæ, ac terrorem populi sui, necnon in contemptum Statuti in dicto Breui specificati, manifestum: Ac proinde, dict.* A.C. *&* D.E. *vna cum armaturis suis arrestaui ac seisiui, & eorum corpora ad proximam prisonã dictæ Dom. Reginæ in comitatu prædict. duci feci, ibidem moratura donec aliud à dicta Dom. Reginæ pro ipsorum deliberatione habuero in mãdatis. Armaturas etiam eorum prædict. appretiari feci, per* A.B.C.D. *&* E.F. *de* B. *prædict* Yeomen, *ad hoc iuratos: qui dicunt, quod prædictæ duæ galeæ valent x.s. Et quod dict. arcus &.* 10. *sagittæ valent,* vj.s. *Et quod gladij prædict. valent xx.s. Et quod dictæ pugiones valent.v.s. & sic quod armaturæ prædict. valent in toto* xlj.s. *de quibus paratus sum respondere secundum tenorem dicti Breuis. In cuius rei testimonium, huic præsenti certificationi meæ sigillum meum apposui. Dat. apud* B. *prædict. die & Anno supradictis.*

By this you haue séene, what one Iustice of the Peace ought to do in execution of this Statute as a Minister: and by the same you may

maye also see, what he maye doe therein of himselfe, *Ex officio*, as a Judge, and without any Writte, brought vnto him, if one Iustice maye deale therein as a Judge.

For not onely by the plaine wordes of the Statute of *Northampton*, the Wardeins of the Peace, haue power (within their Wardes) and are commaunded to execute this Acte vpon a paine. But also by expresse speach in the Commission it selfe, euerye Wardein of the Peace hathe the Statute of *Northampton* committed to his charge. So that both in the matter and maner, the doing is all one, sauing that if he doe it as a Iudge he nedeth not to make any proclamation, the Statute being a prohibition in it selfe, nor yet to sende any Certificat into the Chauncerie, but only to make his owne Record of that which he shal do in this behalfe, and thereout to sende some estreit into the Eschequer, that the Quene may bee answered of the Armour or of the value thereof. And here perhappes the redemption of the imprisonment maye bee at the same Iustices discreation, as in the former Statutes of 15. R.2: & 8.H.6 it seemeth to bee.

Of

Of other breaches of the Peace, with a multitude, as by *Riot*, *Route*, or other vnlawful *Assemblie &c.*

CHAP. XIX.

OVr Parliaments, seeing well that the assemblie of many for breach of the Peace, offereth more daunger and hurt, both generallye to the Commune wealth wherein it happeneth, and perticularly to him against whom it is bent, than the force of any one or two turbulent persons can bring, haue no lesse carefully endeauoured to suppresse the one, than wisely foreseene to preuent and punish the other. And therfore, not onely the Commission giueth power to enquire of Conuenticles against the Peace, but sundrie Statutes also haue deuised many meanes and paines to meete with, and to punish the same, wheras before they wer punishable only, as other trespasses, though some-

Conuenticles.

sometimes by a greater, and sometimes by a smaller fine, as the case it selfe required.

Unlawfull Conuenticles bée not al of one sort: for sometimes those are called Conuenticles, wherein many do impart with others their meaning to kil a man, or to take one an others part in al things, or such like: Champerties also, Maintenances, Conspiracies, Confederacies, and giuing of Liueries to other than to Meniall Seruauntes and Officers, bée contained vnder the worde Conuenticles saith Mar. And it appeareth, (27. lib. Assi. Pl. 44.) to bée one of the Articles enquirable in the Kings bench whether any persons take others to their Auowment and protection, and receiue of them rentes (or other giftes) yearely in the name of Chyuage (or rather Cheifage) bycause they séeme to take vpon them to bée their Cheifes, heades, or leaders. Chyuage.

But, for as much as all these couenaunts may bée without any apparant shewe of Assemblie against the Peace (thoughe otherwise they bée finable offences vnder ỳ name & calling of Conuenticles as Mar. thinketh) I will leaue them, and resorte to those other that bring manifest terror to the Subiect.

Of these some consist of a number of peo-

ple

ple gathered togither disorderly for ỹ cause of some one or of a fewe persons, and do not breede any generall or present danger to the Estate or Gouernement, and yet bee against law, and be called Riots, Routs, and Vnlawful assemblies against the law, against which the Statutes 13.H.4.ca.7:2.H.5.ca 8: & 19.H. 7.ca.13 were specially prouided: and before that, the penaltie of the Statute of *Nort.*2.E. 3.ca.3 ordained to bee laide vpon them by 2. R.2.ca.6. But others there bee that sauour of a more generall disobedience, and bee (either in regarde of the number or quarrell) a verie Seede of Rebellion if not the Weede it selfe, and are therefore also sometimes called Rumors, great Ridings, Routs & Riots, against the Peace 5.R.2.ca.6:7.R.2.ca.6:& 17.R. 2.ca.2. sometimes Assemblies of people in great number, in manner of insurrection: 2. H.5.ca.9. and sometimes Rebellious Insurrections and Rebellious Assemblies 15.R.2.c. 2:8.H.6 ca.14: and 1. Mar.Parl.1.ca.12. Of all whiche (so farre forth as the Iustices of peace haue interest in them) I wil intreat, but yet seuerally, and so, as either one, or moe of the Iustices of Peace haue to do with them, and that out of the Sessions.

They of the first kinde bee, as I haue said, commonly called Riottes, Vnlawful Assemblies

blies and Routes. But concerning the proper difference that is betweene each of these three, all men do not throughly agree. And therfore (reiecting al diuersities of opiniõs) I wil folow ỳ whiche I take to bee most colourable & most cõmõly receiued at this day: wherin neuertheless I submit my self vnto ỳ experience of ỳ Starchamber, as to the best direction ỳ the Iustices of Peace can haue to follow in this case.

Riot seemeth to come of the French word Rioter, which signifieth to braule, or scolde, for commonly Riottes in deede do follow of braulling in worde. And it is taken to bee, Where there is an vnlawful assemblie of mẽ (gathered togither) to commit an vnlawful act, & they do execute it in deed: as to beate a man, or to enter vpõ a possession forcibly, or such like: ỳ fact is properly called a Riot. Riotte.

An Vnlawful Assẽbly is, ỳ cõpany of three persons (or more) gathered togither to doe such an vnlawfull acte, although they do it not in deede. Vnlawful Assembly.

Our Rout is ỳ very same which ỳ *Germans* do yet cal Rot, meaning a band or great cõpanie of mẽ gathered togither & going about to execute, or executing in deed, any Riot or vnlawful act. And (sayth Mar.) it is said properly of ỳ multitude ỳ assemble thẽselues in such Route.

such disorderly sort, for their cõmon quarel. As if the inhabitants of a Towneship do assemble to pull downe a hedge or pale, to haue their Common, where they oughte to haue none, or to beate a man, that hath done them some publike offence or displeasure. But the Statute of 18. E. 3. Sta. 1. Whiche giueth proclle of vtlagarie againste suche as bring Routes into the presẽce of the Iustices or in Affray of the people: And the Statute of 2. R. 2. ca. 6 that speaketh of riding in great Routes to make entrie into lands & to beate others, and to take their wiues &c. doe seeme to vnderstande it more largelie. And it is a Route whether they put their purpose in execution or no, if so bee that they doe go, ride, or moue forward after their meeting. Broo. Tit. Riotte. 4. & 5. So as it seemeth a Route should bee a speciall kinde of Vnlawfull Assemblie And a Riot, the disordered fact committed generally by anye vnlawful Assemblie.

Things Commune, and considerable, in Riottes &c.

Howsoeuer that bee, two things are commune both to Riotte, Route, and Vnlawfull Assemblie: the one, that three persons (at the leaste) be gathered togither, for so is it commonly taken at this daye, as I haue learned.

The other, that their being togither doe breede

breede some disturbance of the Peace, either by signification of Speach, shew of Armour, turbulent Gesture, or actuall and expresse Violence so that either the peaceable sort of men bee vnquieted and feared by the Facte, or the lighter sort and busie bodies emboldned by the Example.

And, in these matters, not onelye the Facte it selfe, but also the Manner of doing the same, falleth sometimes iustly into consideration: in so muche as, the lawfulnesse, or vnlawfulnesse, of the thing it selfe that is done or intended, doeth not alwaies excuse or accuse the parties to a Riotte, Route, or Vnlawfull Assemblie, but so, that the Order and Circumstance of the doing, muste also bee brought into iudgement with it.

And therefore (sayeth Maister Marrow) the manner of the doing of a lawfull thing may make it vnlawfull: As, if many in one companie (riding, or going, to the Sessions, Faire, Market, or Church it selfe) will ride, or goe armed, to the terrour of the people. And cõtrariwise, an Assemblie to do a wrõg (saieth he) maye bee so handled, that it shall proue none of these offences: as, if I gather mãte companie togither, to carrie awaye a peece of Timber (which will not bee moued without a good many) whereto I pretende

right, though in lawe it bée an other mans. And so also to doe an vnlawfull thing, as if many doe méete to play at bowles, tables, or Cardes, & do vse no misbehauior against ỳ Peace, they are not punishable in this degrée. And yet, if he ỳ carieth the péece of timber away, wil vse dreadful words, as to say, ỳ he wil carrie it in spight of him that hath it, or ỳ he wil haue it, though he die for it, or such like, his doing may then proue a Riot.

The maner and handling of a thing, may make it either blameworthie or blameless.

Furthermore, ỳ intẽtiõ & purpose, of those ỳ be assẽbled, is worthie ỳ weighing. For, to vse harnesse on Midsomer night in *Lõdon* or on May day in ỳ coũtry, for sporte only, is no such offence, séeing no terror followeth of it, & the words *in terrore populi* séeme to bée material in an Inditemẽt of this kinde. So, if ỳ Shirife or his Bailie do leuy people to serue ỳ Queenes writs of *Capias*, or if a Cõstable do gather assistãce of mẽ with weapõ to part an Affray, it maketh no Riot. 3.H.7.1 & 10. So if a mã (hearing ỳ another wil fetch him out of his house & beate him) do assemble cõpanie with force, it wil bée no vnlawful assemblie 21.H.7.39. And so also if many bée assẽbled, & none of them knoweth to what ende, it can make no Rout nor Riot (as M. Mar. thought) til ỳ intent bée knowen. For if the maister intend to make a Riot, & take his vsuall seruants with him, not foretelling thẽ what he

intēdeth, & thē cōmitteth an outrage wō thē, this is no Riot in thē: for although he shal bee punished, they shal bee excused. But otherwise it is, if he make thē priuy to his purpose. Mar. & in ỳ report of Dalisō. And in ỳ former case, it is not material whether his number of seruants bee aboue his degrée, or no, so lōg as they bee his Menials or household mē. And if a nūber of women, or infants (vnder ỳ age of discretion) do assemble thēselues for their own cause, this is no vnlawful assēblie punishable by these Statutes: But if a man of discreation cause them to assemble to cōmit an vnlawful act, then it is otherwise sayeth Mar. And I remēber, ỳ not many yeres since womē were punished in ỳ Starchamber, and ỳ worthily, for ỳ (hauing put off their sémely shamefastnesse, & apparelling thē selues in ỳ attire of mē) they assēbled in gret nūber, & in Riottous maner pulled downe an inclosure.

If many be at an Alehouse a Christmasse dinner, or Churchale, & (without any intētiō of an Affray) they sodainly fall togither by ỳ eares, & make it *Lapitharū conuiuiū*, yet this is no Riot, vnles they betake themselues to parts, for so it wil easily become a Riottous assembly. And if 12. Iurours (being committed to their kéeper) do fal out & fighte, fire against fire, this maketh no Riot saith Mar.

N.ỳ. by-

bycause they were lawfully assembled, and were compelled to bee in companye together.

Finally, if the Maior and Communaltie of a towne do assemble and make a Route in their common quarrell, this offence shal bee iudged and punished in their Naturall persons, & not in their bodie politicke Mar.

Thus farre you see, what these offences bee, and in what manner they may bee committed: now therefore beholde what power one Iustice of the Peace hath ouer them.

The power of one *Iustice* of the Peace, in Riotte &c.

One Iustice of the Peace, can neither make enquirie of a Route or Riotte when it is done, nor assesse anie Fine nor yet award anye processe for it, nor otherwise meddle with it, (in the nature of a Route or Riotte) but only as a Trespasse against the peace, or vpon the Statutes of *Northampton* or of Forcible Entries before treated of.

And therefore if he heare of any Route or of any intention of a Riot, he alone, or with his seruants may go to ỹ place, & such as he findeth Riottously assembled & armed, he may arrest to finde Suertie of their good abearing, and may committe them to warde, if they refuse to giue it, and take their weapons frō them: And if he come to the place, and doe not finde thē yet come thither, he may leaue his

his Seruauntes there, to make suche arrest when they shall come: So also, if he bee sicke, he may send his seruants to ỹ place to arrest them. And this is the iudgemente of all the Courte, in the case of Sir Thomas Greene. 14.H.7.8. grounded vpon the wordes both of the Commission of the Peace, and of the Statute. 34. E.3.ca.1. as I take it. But if one Iustice of the Peace alone will take vpon him to Recorde a Riotte that he seeth, the partie shall not bee concluded thereby, for he may trauerse it: and if the Iustice wil cõmit one to warde pretending vntruelye ỹ he did a Riot, where he did none, an Action of trespasse lieth for ỹ party against him. Fitz. Fo. 18.

So that (vppon the whole matter) one Iustice of the Peace alone may do somewhat to preuẽt a Route or a Riot, before it be done, and for the staye of it whilest it is a doing, but nothing in effect to punish it as a Riotte or Route, when it is committed and done: For (as Iudge Fineux saith) (in that case of Sir Thomas Greene) ỹ Statute which I take to bee that of 34. of E.3.ca.1. was giuen as a hastie remedie, & for to preuent a mischiefe, being imminent and before the eye, & therefore the law shall largelie construe the auctoritie of a Iustice of Peace in that behalfe: So that he shall neither neede to make anie

Precept in writing, nor to expecte the comming of his Companions, nor to bée present in his own person, but may vse al reasonable meanes for preuention and staye of the euil. And yet the ordinary power of punishing Routes & Riots resteth not in his hand, but rather belongeth to two Iustices of the Peace, as it shal hereafter appeare. In the meane time, I will adioine somewhat out of the Statutes of our owne age, the whiche séeing further into the perilles that ensue of these vnlawful conuentions, haue also prouided further, as wel in politie to preuente them, as in seueritie to punish them.

Rebellious and vnlawful assemblies.

The statutes (1. Mar. Parl. 1. ca. 12: & 1. El. ca. 17.) do make three degrées of Riottous & Seditious Assemblies, in certaine special cases, the first, consisting of the commune number of three persons, and being vnder the nũber of twelue: the seconde of twelue persons (or more) and the thirde of fortie persons & vpward: All which are to bée punished diuersly, according to the number, intent, acte, & obstinacie, of the parties assembled: wherein there is some imitation of an auntient law that King Ina made against théeues, whose degrées in offence he seuered & punished by their nũber also, saying thus: Þeofap þe hatap oðde ſeofan menn: ffram ſeofan hlop

op

of fif 7 fyttig: and ſyppan hepe: ỹ is, Théues we call them vntill the number of ſeauen men: from ſeuen, a Troupe, vntil 35: and an Armie, aboue that number. But I will proceede.

One Iuſtice of the Peace therfore, maye (by vertue of theſe Statutes) make proclamation in the Queenes name, that the perſons (aſſẽbled in offence of theſe lawes) ſhal ſeuer themſelues, and departe to their dwellings peaceably: and withal may (at his diſcreation) aſſemble hir Maieſties ſubiectes to take thẽ: and may alſo take them indéede if they diſobey, & ſhal bée vnpuniſhed for ỹ hurting, maiming, or killing of any of them, if they make reſiſtance. Ye alſo is to take the declaratiõ of any perſon, that (being moued to any ſuch aſſembly) wil within 24. houres after reueale the ſame vnto him. Proclamation.

Here I muſt ſtay, and for a time, goe no further with theſe aſſẽblies, bicauſe the power of one Iuſtice of the Peace fayleth mée, & extendeth no further in them: the reſt ſhal bée diſcloſed, when order ſhall lead vs to intreate of the auctoritie of two Iuſtices.

VVhat other things one *Iustice* of the Peace alone, may do out of the *Sessions*, by vertue of Statutes mentioned in the *Commission*.

Cap. xx.

BEFORE that I shall descende to shewe suche further partes of power as bee giuen to one Iustice of the Peace by latter Statutes, it shall not bee amisse to take in my waye, that remnaunte of hys authoritye whyche lyeth in the firste *Assignaunce* of the Commission, and hath not bene yet fully applyed to the practise.

The whole consisteth of such members as I haue alredy shewed, namely of ỳ Statute made

made at *Winchester*. 13. E. 1. of the Statute made at *Northampton*. 2. E. 3. ca. 3. the Statute made at *Westminster*. 5. E. 3. ca. 14. the Statute mentioned to be made at *Cambridge*, (but mistaken for *Canterburie*) 12. R. 2. the Statutes 1. H. 4. ca. 7: & 2. H. 4. ca. 21: of Liueries: and the Statute 3. H. 5. ca. 6. & 7. of counterfeting and other falsifying of money.

Of this laste Statute, as also of that at *Northampton*, I haue heretofore saide what I thought. Concerning *Winchester* & *Westminster*, I say shortly, that by the forme of the Commission as it is, one Iustice of the Peace may put the articles of them in execution: First, by commaunding fresh sute, hue and crie, and search to be made by the Shirifes and Baylifes, & others, after thefts and robberies: watches to be kept for arresting of suspected persons and night-walkers: and highwayes to be enlarged: Then by seeing, that two Constables be in each Hundred and Franchise: by forbidding Fairs and Markets to be holdē in Churchyards: by compelling such as be betweene the age of fifteene yeares and thereafter, to be sworne to the Peace (for that also is in the Articles vppon the Statute of *Winton*) & lastly, by charging the Constables to arrest such as shal be suspected to be Drawlatches,

Wastours, or Robertsmen, that is to say, either mychyng or mightie theeues, for the meaning muste remaine, howsoeuer the word be gone out of vse.

The Statute of *Canterburie* (made chiefly for Artificers and Labourers, and partly for Victualers) is repealed for the first, and runneth for the last in a generalitie. And as for that law, & those of H. the 4. concerning Liueries, I see not what one Iustice of the Peace may well do towardes the execution of them, further than by commaunding thē to be obserued. For, the forfeiture groweth, either by Attainder vppon enquirie, or by Record of the Iustices in their presence, as the Statutes themselues do appoint. And these bothe doe require two Iustices, as the very wordes thereof, and of the second *Assignauimus* in their Commission, being in the plurall number, doe plainely purporte.

For, I do not thinke that any other maner of execution of these lawes by one Iustice of the Peace, ought to bee gathered by any general wordes of the first *Assignauimus*. I know, that M. Fitz. in his Nat. Br. Fol. 82. saith, that albeit a Iustice of the Peace hath none expresse auctoritie within his Commission to take a Recognusaunce of the Peace,

Peace, yet of Congruence it followeth, that he may take it, because he hathe auctoritie in plaine wordes, to cause the Peace to bee kept, and to compell men to finde Suertie for the same. And it is a Rule of Lawe, *Concesso vno aliquo, etiam id concedi videtur, sine quo prius concessum haberi nequit:* But howe farre these things may bee drawen, I will not determine, remembring, that this also is an other Rule, *In generali concessione non veniunt ea, quæ quis non esset verisimiliter in specie concessurus.*

But as I haue saide heretofore, A newe reforming of the present forme of the Commission woulde easily remoue from vs all these doubts.

This I do not like at al, that one Iustice of the Peace, shoulde take vppon him to binde an offendor agaynste anie Penall Lawe, (being wythin the power of Iustices of the Peace, but yet neyther comprehended in their Commission, nor committed to the charge of anye one of them) to appeare at the Sessions, to aunsweare to his faulte. For, although I haue seene sundrye olde Precedents of Attachments to be made from one Iustice of the Peace agaynste

Labou-

Labourers, to be before the Iustices at their Sessions, to aunsweare to their contempts: yet I am not persuaded that the like maye be done against the offendors of other Statutes, vnlesse it be specially therein so appointed: no more than it might haue bene done in that case of Labourers it selfe, had not the Statute of Labourers (25. E. 3. ca. 6.) expressly commaunded it.

And I doubt not, but they of the last Parliament were also of this minde with me: For, if they had thought it generally lawful so to doe, they woulde not haue so specially prouided for it, as you shall anone see in the notes of the Statutes, (23. Eliza.) against Slaunderous newes, and against the taking of Pheasants and Partriges. And surely, much harme followeth of it, for it falleth out moste commonly in experience, that those Iustices whiche be moste busie to take such bondes, bee no lesse readie to release them: and so (playing falste and lose) they keepe (as it were) priuie Sessions wythin their own houses, in which, both ỹ Queene loseth hir Fine, and the common wealth an example: and if the offendor lose also, then that (belike) falleth to the share of him that worketh the deliuerance.

And therfore, it were better (as I weene) that

that such offendors were first Endited, and then that Procesle were orderly awarded against them, vntill that eyther they yelded themselues, or were taken, or outlawed.

There is an other thing also, whereof I thought méete to admonishe the Iustices of Peace, in this place. Many of them doe vse to giue out their Precepts to attach persons suspected of Felonie, to haue them brought before them, which thing is neyther newly deuised, nor done without colour: for they haue such a Precedent in the olde Booke of Iustices of the Peace Fol. 41. and there is no doubt, but that if a Felonie bee done, euery man may arrest whomsoeuer he suspecteth of it. But for all that, the whole Courte (14 H 8. 18.) condemneth such Precepts, because, if the Bailife which serueth the Warrant, haue suspition in the partie, he may of himselfe without the Warrant arreste him: and if he haue not, the Warrant of the Iustice of Peace is no warrant to arrest him, vnlesse he be endited before.

What

VVhat other things one *Iustice* of the Peace may do, out of the *Sessions*, by the power of other Statutes, not mentioned in the *Commission*.

CHAP. XXI.

Any one Iustice of the Peace.

SEing the whole power of one Iustice of the Peace (as wel in the very businesse of the Peace it selfe, as in the execution of some Statutes mentioned in the Cõmission) hath now at length bene rehearsed. It is cõuenient to summe vp such other partes of power also as other Statutes haue putte into his hands, which done, we wil no longer treate of one Iustice alone, but wil associate some other vnto him.

Conseruator of Riuers.

Euerie Iustice of the Peace is a Conseruator of Riuers wythin his Countie: and (when he may attende it) oughte to surueye the

the Weares in Riuers, that they be of reasonable wideneſſe, and ſhall ſuruey the offences of taking Salmons in any Waters (out of the Countie of *Lancaſter*) betweene the Natiuitie of the Virgine Marie, and S. Martins day, and (there) betweene the feaſts of S. Michaell, & the Purification of the ſaid Virgine: and of taking yong Salmons at Pyll Poles, or other places, from the middeſt of Aprill till Midſommer: and of caſting Nettes into any Waters, (by whych the fry of any fiſh may be taken) and puniſh the ſame by burning of their Nets and engins. *Weſtminſt.* 2. ca. 47: 13 R. 2. ca. 19. & 17. R. 2. ca. 9.

One Iuſtice of the Peace may take vpon him to heare and order the controuerſies, betweene Maiſters and ſeruants, touching their departure, & may alow of the reaſon, & ſufficiencie of the cauſe, for which a Maiſter may put away his reteyned ſeruant, or the ſeruant may departe before the ende of hys terme: and may (in Hay time or Harueſt) vpon requeſt, and for the ſauing of Corne, graine, or hay, cauſe ſuche Artificers, and perſons (as be meete to labour) by his diſcretion to ſerue by the day, for the getting, cutting, inning, or carying therof, according to the ſkil and qualitie of the perſon, & may (vpon

Apprētices. ſeruants, and labourers.

(vppon his refusall) imprison him in the Stockes by the space of two dayes and one night. And his testimoniall vnder his hand and seale to such as may passe in Hay and harueſt time, from one Shire to another, is sufficient. And he also vpō complaint made, may commit that partie to warde, that in his iudgement shall bée thought méete, and yet shall refuse to be bound as an Apprentice, according to the intent of the Statute, there to remaine vntill he bée contented so to be bound. And also may by his discretion vpon the complaint of the Apprentice, take order betweene his Maister and hym, and for want of conformity in the Maister, may binde him to appeare at the next Sessions before the Iustices 5. Eliz. ca. 4.

Roages and vagabonds.

If any such person, as is declared to bée a Roage, Vagabonde, or sturdy Beggar, by the Statute (14. Eliz. ca. 5.) being aboue the age of fourtéene yeares, shall bée taken begging, or wandring, or misusing hymselfe, contrary to that Acte, and be brought before a Iustice of the Peace, he is presently to committe him to the common Gaole, or to such other place, as shall be by the Iustices of the Peace, (or three of them) at their generall Sessions appointed therfore: to remaine there (without bayle, or mainprise)

prise) till the next Sessions of Peace, or generall Gaole deliuerie, whiche shall firste happen.

And the Register booke of the Poore within each diuision of the Justices of Peace, is to remaine with one of the Justices of that diuision. And eyther of those two Justices before whom the Collectours for the poore are appointed to make their accompt, may commit him (that shall refuse or neglect to make his accompt, by the space of 14. dayes after request to him thereof made) to the next Gaole, there to remaine wythout baile or mainprise, til he hath made it, and payed the surplussage of his receit 14. Eliza. ca. 5. Learne if the Register Booke is to haue continuance still. Poore people

Upon information to anye Iustice of Peace of any vnlawfull hunting by night, or with painted faces, or other disguising (in Forrest, Parke, or Warrein) of anye person to bee suspected thereof, that Iustice may make a Warrant to the Shirife, Constable, Baylife, or other Officer, to take the partie, and to haue him before him, or any other Iustice of the Peace in that Cõtie, who may examine him of that hunting, and of the doers in that behalfe, and if he do wilfully conceale that hunting, or any per- Hunting.

son with him defective therein, then the same concealement shal be Felonie in such concealour, but if he confesse the truth of all that he shall be examined in that behalfe, then his offence of Hunting, shall bee but Trespasse and Finable at the nexte generall Sessions of Peace there. 1.H.7. cap.7.

Vnlawfull games.

Euerie Iustice of the Peace maye (as well within Liberties, as without) enter into any common house or place, where anye playing at the Bowles, Coytes, Cloh, Cayles, halfe-bowles, Tennis, Dice, Cardes, Tables, or at anye other game prohibited by anye former Statute (of which sorte be Foteball, and casting of the stone by 12. R.2. ca. 10.) or playing at any vnlawfull game (alreadie inuented, or hereafter to be inuented) shall be suspected to be vsed against this Statute: and may arrest as well the keepers of suche places, as the players there, and imprison them vntill those keepers finde Suerties to the Quéeres vse (to be bounde by a Recognusaunce, or otherwise) no longer to occupie anye suche play or place, and that the persons founde there playing, bee in like sorte bounde by themselues, or

with

wyth Suerties (at the discreation of the taker) no more to playe, or haunte, at, or to, anie of the sayde places, or at any of the saide games. And euerie Iustice of the Peace, finding or knowing anye person (not excepted by this Statute) to vse anye vnlawfull game, contrarie to thys Acte, maye committe hym to warde, there to remayne wythout bayle or mainprise, vntill he become bounde by Obligation to the Quéenes vse (in a summe to be thought reasonable to that Iustice) that he shall not from thencefoorth vse suche vnlawfull games. 33.H.8 cap.9.

Anye one Justice of Peace (by the large woordes of the Statute) maye enquire, heare, and determine, by hys discretion, as well by examination as otherwise, the offences committed in Tilemaking, and assesse the Fine therein limited. And maye call before hym (at anye time or place) suche as haue beste knowledge in Tilemaking, and appoint them Searchers of the sayde defaultes, 17. Edward. 4. cap. 4. But learne whether it bée so to bée taken or no. Tyle.

Souldiours selling horse or harneſſe.

If anye Souldiour, ſeruing the Quéene in hir Warres, doe ſell, gyue away, wilfully purloine, exchaunge, alter, or put away, any Horſſe, Gelding, Mare, or Harneſſe, wherewith he ſhal be ſet forth, or which being taken from any other ſouldiour, ſhall be appointed vnto him, and doe eſcape the puniſhment, which the Lieutenant, high Admirall, the Kings Deputie the Viceadmirall, Wardein, & Captaine, & their Deputies, in their abſence may laye vppon him, by this Statute, then vppon complaint and due proofe of the offence to bée made by the owner, hys Executors or Adminiſtrators, to any Iuſtice of Peace, where ſuche offendour ſhall bée founde, he ſhall be by him committed to Warde, there to remayne (wythout baile or mainprize) till he ſhal haue ſatiſfied the owner, his Executours or Adminiſtrators, of ſuch Horſe, Gelding, Mare, or Harneſſe ſo ſold, gyuen awaye, &c. vnleſſe hée bring with hym before the ſame Iuſtice, ſufficient teſtimonie from the ſayde Lieutenaunt, or anye of the perſons aboue named (in writing vnder their Seale) teſtifying, that the ſaide Horſſe or Harneſſe, was loſte in the Quéenes ſeruice againſte the wyll of that Souldiour, or was taken by

any

anye of them from hym for anye reasonable respecte, and appointed to some other to serue wythall 2. and 3. Edwardi 6. cap.2.

If anye person (to whome anye *Agnus Dei*, Crosse, Picture, Beade, or such superstitious thing from the Sea of *Rome*, or the auctoritie thereof, shall bee offered or deliuered) doe disclose the name and dwelling (or place of resorte) of suche offerer or deliuerer, to any Iustice of Peace of that Shire, where hee, to whome suche offer or deliuerie is, shall bee resiant: then that Iustice muste (wythin fourteene dayes nert after) declare the same to some one of the Queenes priuie Counsell. 13. Elizab. cap.2. *Agnus Dei.*

Euerye Iustice of Peace maye (wythin one Moneth after the speaking or reporting) committe to Warde, anye person, beyng vehemently suspected of saying, or reporting of any slaunderous newes or tales, agaynste the Queenes Maiestie, (vnlesse he do put in Suerties to appeare at the nerte Quarter Sessions, or Gaole deliuerie) there to remayne, till he shall finde Suerties for suche hys apparance. And maye also (wythin one Moneth after suche speaking, or reporting) re- Slaunderous newes.

ceyue the accusation thereof, and putte the same, and the names of the Witnesses in writing, and certifie it at the next Quarter Sessions, or Gaole deliuerie. 23. Elizab. ca. 2.

Disturbing of Preachers

If anye offendor (contrarie to the Statute prouided againste the Disturbers of anye Preacher) shall bee arrested and brought before a Iustice of the Peace, then he (vppon due accusation therevpon hadde by the sayde arrestor, or other person) shall forthwyth committe the partie so taken to safe custodie, by his discretion. And wythin fiue dayes nexte after the accusation, he and one other Iustice of Peace shall, &c. 1. Mar. Parlia. 1. ca. 3. But enquire, if all thys Statute bée not repealed by 1. Elizab. cap. 2. in generall wordes at the latter ende thereof.

Egiptians.

Euerie Iustice of the Peace may (within one Moneth after the arriuall) seaze all the goodes of anye outlandishe persons (calling themselues Egiptians) that shall come into thys Realme: and maye also kéepe the one moitie thereof to hys owne vse, makyng accompte to the Quéene in the Escheaquer for the other moitie.

And

And euerie person that can proue by two credible witnesses before him that so seazeth, that any of those gwdes were craftily, or feloniously taken from him, shall be incontinently restored thereto before the partie that so seazed them, vppon paine of the double valewe thereof to be forfeited to such prouer. 22. H. 8. cap. 10. But note, that after the Moneth, the offence is made Felonie, and then it seemeth, the Quéene is to haue the gwdes wholly. 1. & 2. Phil. & Mar. ca. 4.

If any one Iustice of the Peace do ioyne with the Clearke of the Peace in taking the Inrollment of an Indenture of bargaine and sale of lands, tenements, or hereditaments, lying in that Countie where he is Iustice, it is sufficient as it seemeth by the wordes of the Statute, 27. H. 8. cap. 16. Inrollment

Euery Iustice of Peace maye examine & search (by his discretion) such as doe sell or set forth to be solde any Candels, and other workes of Ware, at higher price than after the rate of foure pence the pounde, ouer the common price of plaine Ware, betweén Merchant & Merchant: and may also punish Worke of Waxe

them by forfeiture of the worke sette forth to sale, and of the valewe of that whiche is solde, and by Fine to the King. 11. H. 6. ca. 12. as it seemeth by the large words of the Statute.

Assises of Fewel.

Anye one Iustice of Peace, is warranted to sette on the Pillorie, in the nexte Market Towne to the place of offence, any person that hath broken the Assise of Fewell, and is conuicted thereof, and not able to pay the forfeiture, there to be at eleauen of the clocke vppon the Market daye, wyth a Billet or Fagot bounde to some parte of hys body. 7. E. 6. ca. 7. but consider, whether a Iustice of Peace, maye conuicte him of the saide forfeiture or no: for it seemeth by the wordes of the Statute, that hee is to be rather a Minister, than a Iudge in that case.

Repayre to the Church.

If any person (aboue sixtéene yéeres of age) doe by the space of twelue Moneths, forbeare to repaire to some Church, Chappell, or vsuall place of common Prayer, contrarie to the tenor of the Statute (1. Eli. ca. 2.) then any one Iustice of Peace of the Countie where such offendor shall dwell or be, may make Certificat thereof in writing into the Kings Bench, to the ende, that the offendor maye therevppon bée bounde

in

in 200.*li.* at the leaſt with ſufficient ſuerties to the good behauiour for ỳ this ſo lõg obſtinacie, beſides the other penalties 23. Eliz. cap. 1.

Pheſants, & Patriches.

Euerie Iuſtice of Peace maye examine offences againſt the Statute made for preſeruation of Pheſants, and Patriches, & againſt hauking in Corne (if the ſame offences bee not before lawfully hearde, or determined otherwiſe) and may take bond of the offendor with good ſuerties for his apparãce at the nert generall Seſsions of the Peace, to aunſwere to the ſaide offence, and to pay the penaltie, or receiue the punishmẽt due therfore: and may alſo after conuiction and punishment of ſuche offender, in taking or killing Pheſãts or Patriches, take like bõd of him & ſuerties, that for the ſpace of two yeares, he ſhall not offende againſt the ſaide Statute. 23. El. ca. 10.

Plaints in the Countie Courts.

It ſeemeth that one Iuſtice of the Peace, may (vpon complaint of the partie greeued) examine the Shirife, Vnderſhirife, and Plaintife, concerning the taking or entering of plaintes in their Countie Courtes & bookes againſt the Statute: And if he finde therby any fault or offence committed, that ſhall ſtande for a ſufficiente conuiction and attainder, without any further enquirie or ex-

mination: So may he also examine the Bailie of the Hundred for not warning of the Defendant in such a plaint, according to his precept from the Shirife or Vndershirife, and if thereby he finde a default and offence, that also shall stand for a sufficient condemnation. And the saide Iustice must Certifie those examinations within a quarter of a yeare into the Eschequer.

And further the *Custos Rotulorum* or ỳ Eldest of ỳ *Quorum* in his absẽce, ought (at the General Sessions after S. Michael) appoint two Iustices of the Peace (the one being of ỳ *Quorum*) to haue the ouerlighte and controlement of the said Shirifes &c. and of ỳ amercemẽts. And that one of those Iustices may examine and (without further enquirie) conuict the gatherers of the same, if they gather any more money than is contained in their lawfull Estreites. 11. H. 7. ca. 15.

Certificat of selling Corne.

The Certificate of one Iustice of Peace (ioyned with the Customer of the place) of the vnlading and selling of Corne, Graine, or Cattell, carried by Water from one place to an other of thys Realme vnto the Customer and Controller of the place where the same was imbarked, is sufficiente and ynough vppon the Statute

of

of forestalling. 5. Edward. 6. cap. 14: &c. 13. Eliz. cap. 25.

One Iustice of Peace maye take out of Sanctuarie certayne abiured persons thither and others being indited of some kind of offences mentioned in the Statute, done after they become Sanctuarie men, & maye commit them to the Gaole in the Countie where the inditement is founde, til they bee tried. 22. H. 8. ca. 14. Sanctuarie persons.

Euerie person finding or seeing anye to offende the Statutes made againste the shoting in Crossebowes and Handgunnes, maye arreste and bring, or conney him to the next Iustice of the Peace of the Countie, wherein he was founde offending, who (vpon due examination and proofe thereof beefore him made) may by his discreation commit him to the Gaole, there to remaine tyll he shall truely pay the one moitie of the forfeyture of this Statute, to the Quéene, and the other moitie to such firste bringer or conueyer. 33. H. 8. cap. 6. Here therfore thys Iustice of Peace hauing (as it seemeth) the whole matter committed to hym selfe in thys case, is to bee verye circumspecte therein, leaste hée too hastelye condemne the guiltlesse, or negligentlye suffer Crossebowes and handguns.

suffer the offendor to escape, for vpon the offence sufficiently proued, it is necessarie that in his *Mittimus* or precept to ỹ Gaoler there be contained the names of al the parties, the offence, and how long hée is to bée holde in prison. And further he is to make a Record of this matter, and send the Estreit thereof into the Eschequer, wherby the Barons may haue intelligence of the same, to haue the Quéenes dutie leuied to hir vse. The forme of this *Mittimus* may bée easely drawne by some other Precedents in thys Booke.

Euerie person (other than such as are autorised by value of 100. *lb.* in landes) ought, if he bée autorised to shote, and do inhabite in the Countrey, present his name to ỹ nert Iustice of Peace adioyning. And thereupon the Iustice ought to present and recorde the same before the Iustices of the Peace at the next quarter Sessions 2 E. 6. ca. 14 But learn of others, whether this matter is to haue cõtinuaunce still, or else did onely extende to suche persons as had licence at that time.

Highwaies. The Superuisors for amendement of ỹ highwayes, ought within one moneth after any offence done by any againste the Actes (2. & 3. Ph. & Ma. ca. 8: & 5. Eli. ca 13.) present that offence to the next Iustice of the Peace:

And

And therevpon he ought to certifie the same at the next Generall Sessions within the same Countie. 5. El. ca. 13.

Euerie Iustice of Peace (as it seemeth) within the Shires next adioyning to the riuer of *Thamis*, within their seuerall iurisdiction, hath power vpon complaint made vnto him by the Ouersæers and Rulers of the Whirrymen and Watermē, or two of thē, or the maisters of any such seruaunts, both to examine, heare, and determine all offences committed against the Statute, and to set at large him that shall bee imprisoned, by the ouersæers & rulers, if there bee iuste cause, and also by his discreation to punishe the ouersæers and Rulers, that shall vniustlye punishe anye person. 2. & 3. Phi. & Mar. cap. 16. Thamis.

Euerie Iustice of Peace (before whom any person, arrested for Manslaughter or Felonie, or suspition thereof) shall bee brought, ought (before he committe him to prison) to take the examination of such prisoner, and the information of those that bring him, and to put the same (or so much thereof as shall bee materiall to proue the Felonie) in writing within two dayes after, and to take Bonde of all such as doe declare any thyng material to proue the offence, to appeare at the Examinatiō of Felons to be committed.

the nexte Generall Gaole deliuerie, & to giue euidence there against the partie. 2.&.3.Ph. & Mar.ca.10.

The forme of the bond mentioned in this last Statute.

This bond spoken of in this Statute, and in some such like, séemeth to bée mẽt of a Recognusãce, to bée acknowleged to ỹ Queenes vse with Condition for the performaunce of that, for which the Statute appointeth it to be taken. For (as before hath bene saide) euen as in the case of Suertie of the Peace & Good Abearing. The Iustice of the Peace taketh vsually a Recognusance, and is well warranted so to doe, being made a Iudge of Recorde as touching matters of the Peace though he hath no ful words for him neither in any Statute nor in his Commission. So being auctorised by this Statute to deale in this matter, he may be wel said to hauetherin inclosed by a very good Congruence, power also to Recorde the acknowledging of a sum of money to bée forfeited to ỹ Queene, vpon not performing the Condition of the same.

The partie therfore that informeth against the *Prisoner*, may be thus bound, in a single *Recognusance*.

Kanc. M *Emorandum quod 3 die Septemb. anno regni Dominæ nostræ Elizabe. dei gratia &c.* 23.

D.

D.E. *de* Brasted *in comitatu predicto* Yeoman *personaliter coram me* Thoma Potter, *vno Iusticiariorũ &c. ad pacẽ &c. assignatorum constitutus apud* Brasted *predict. recognouit se debere dicte Domine Regine decem libras bone & legalis monete Anglie, de bonis & catallis, terris & tenementis suis fieri & leuari ad opus dicte Domine Regine, heredum & successorum suorũ, si defecerit in conditione subsequenti.*

Th.P.

And with such a Condition.

THe condicio of this Recognusance is such that wheras one *A. B.* late of *C.* labourer was this present day brought before the said Iustice by the aboue bounde *D. E.* and was by him charged with the felonious taking of twenty sheepe, of him the saide *D.* and therevppon sent by the saide Iustice to the Queenes Maiesties Gaole: If therefore he the saide *D.* shall and will at the next generall Gaole deliuerie (to bee holden in the saide countie) prefer, or cause to be framed & preferred one bill of Inditemente, of the saide fellonie, against the said *A.B.* and shal and will then also giue euidence therin cõcerning the same, aswell to the Iurors that shal then enquire of the saide fellonie, as also

so

so to them that shall passe vppon the Triall of the saide *A. D.* That then &c. Or else &c.

The *Mittimus* of the Prisoner, after his examination, may serue thus:

THomas *Potter*, one of the Iustices &c. To the keeper of the Queenes Maiesties Gaole at Maydstone, &c. greeting. I sende herewithal, the body of *A. B.* late of *C.* Laborer brought before me this present day, & charged with the felonious taking of twentie sheepe, which also he hath confessed vpon his examination before me. And therefore these shall be on the behalfe of our said souereigne Ladie to commaund and charge you, and euerie of you, that you doe immediately receiue the saide *A. B.* & him safely kepe in your said Gaole, vntill that he shall be thēce deliuered by due order of hir Maiesties laws. Hereof faile you not, as you wil answere thervnto at your vttermost perill. Yeouen. &c.

There also you may see (if I bee not deceiued) the time when the examination of the Felon himselfe, was first warranted by our Law. For at the Common Lawe, his faults

was

was not to bée wrong out of himself but rather to be proued by others.

And bycause that some Iustices of Peace do vpon this Statute vse to take the information of the bringers of the suspected persons vpon their Oathes, and other some doe receiue it without any Oath at all: Let vs sée by the way what is wont to bée saide for either side, that a man may the better sée what way to incline and follow. Whether the examination ought to be vpon Oath or no.

They that take the information, or examination (for this Statute doth vse both the wordes) without any oath, do say, that if the makers of this Statute had ment that an Oath shuld bée take̅, then wold they haue expressed the same, euen as the Statutes for Bankerupts (34.H.8.ca.4: & 13.Eliz.ca.7.) the Statute of Accomptantes in the Exchequer (5.R.2.ca.13) The Statute of Labourers (2.H.5.ca.4) and the Statute of chosing Knights of the Parliament 8.H.6.ca.7. haue done: in all which Statutes, Examination by Oath is giuen in plaine wordes.

But they of the other side séeme strongly to defende their exacting of the Oathe, by the example of the Iustices of the higher Courtes, and doe alleage, that whereas the Statute (5.H.4.ca.8.) ordained (without any mention of Oath) that in Actions of Debte

vpō arrerages of accōptes, the Iustices shold haue power to examine the Attorneys and others, the Iustices of ȳ Bench do vse in that case to minister an Oath to the examinate, as it may appeare. 19.H.6.4: & 35.H.6.5 The like (say they) hath bene done in olde time vpon the Statute (18.E.1) that giueth the examination of a woman couert in leuying of a Fine: for (25.E.3.44.) a woman couert, partie to a Fine, was examined & sworne, whether she were of ful age, or no: & the like also (as they say) is done daily, in al the examinations of Sūmoners, Viewers, Shirifs, Clearkes, and of other Officers, that doe happen in the Courtes at *Westmin.* And M Brooke. Tit. Exami. 32 is of opinion ȳ euery examination is vpon oath. And the Statute 2.E.6. cap.13. that giueth power to the Ordinary to examine a man for his personall tithe, excepteth an Oathe, as though else he mighte haue done it by exacting one.

Besides this, they adde a reason, alleadging, ȳ if these informers bee examined vpō Oath, then although it should happē them to die before the Prisoner haue his Triall, yet their information may bee giuē in euidence, as a matter of credite, whereas otherwise it wold be of little or no weight at all, & therby offēders shold the easlier escape vnpunished.

And lastlye (say they) the precise penning

of some particular Statutes, is no sufficient warrante to vnderstande all other Statutes accordinglye, vnto whiche opinion my selfe coulde bee easily brought to subscribe.

Thus mighte (and woulde) I conclude this parte concerning the power of one Iustice, sauing onely that this Statute doeth giue me occasion to extende my speech a little further. For, whereas it requireth that the Iustice of Peace should in taking the examination, make choise of suche things as bee material to proue the offence, it seemeth necessarie that he (being perhappes vnskilfull in the lawes of the lande) shoulde bee somewhat instructed what actes those bee, that doe amount to Manslaughter or Felony ment within this Statute, & what other acts (though they carie som reſẽblãce) of ẏ same) yet do not reach so far. And hereby he shall ẏ better know, whẽ to cõmit ẏ partie ẏ shal be brought before him, & when he shal not need to meddle with him at all. But now I will only deliuer him (so shortlye as I can) those few helpes ẏ do redily come to my hand for knowledge of sundrie Manslaughters & Felonies at ẏ Cõmon Law, leauing ẏ Felonies made by Statutes to appeare vnto him in ẏ rehearsal of ẏ charge of ẏ Sessiõs of ẏ Peace in the next booke whẽ I shal come vnto it.

What Actes be *Manslaughter*, or *Felonie*.

Felonies touching the person.

The Statute 1. & 2. Ph. & Mar. cap. 13. concerning the Baylemente of prisoners (which gaue the occasion of the making of this presente Acte) seemeth to distinguishe Murder and other more capital crimes from Manslaughter and Felonie. And it is certain, that in comon speech Manslaughter is taken to bee a speciall manner of wilfull killing without any malice forethoughte off. And Felonie is not commonlye vnderstoode to extende so farre as vnto Murder. Yet seeing the principall consideration of this Statute is (in mine opinion) rather to bee practised in case of Murder than in these other lesse offences, I will aduenture (though ye Statute haue not the words) to mingle them togither, and make it here (as in truth it is) a chiefe kinde of Manslaughter and Felonie. For as in olde time euerie killing of a man was of ye Effect called Murder bicause death ensued of it (for of the Hebrew worde *Moth* (saith *Postellus*) commeth the Latine *Mors*, which the Saxons (our Elders) called Morþ and Morþor as we yet sound it: so was that wilful manner of sleying w̄ malice prepensed lōg since and most properly called Felonie, because it was done *Felleo animo*, in malicious heate & displeasure, and *per Feloniā* as the Statute at

Morth *Morthor*

Marle-

Marlebridge. 52. H. 3. ca. 25. doth tearme it.

Not euerie Manslaughter deserueth punishment (saith M Bracton) for interpressing that *Homicidium corporale facto committitur quatuor modis s. Iusticia, necessitate, casu vel voluntate*, therewithall he addeth that the firste of these is no sin at all, if it bee done sincerely, and without delight in shedding of bloud. Foure sortes of *Manslaughter*. *Iusticia.*

And therfore neither is the Iudge that by Iustice condemneth the guiltie to death, and commaundeth the minister to do execution, nor the lawfull Officer ỹ executeth the iuste cõmandement according to his warrãt, guiltie of any offence, for which vpõ examinatiõ either of thẽ ought to bee cõmitted to prison.

But if the Officer wil behead or otherwise execute him that is condemned to bee hãged, or if a priuate man without warrant wyll hang or kill such a condemned or outlawed person, this will bee a Felonious acte stretching to Murder, by good opinion 35. H. 6. 58: & 27. lib. Ass. Pl. 41.

And though the law hath bene takẽ heretofore, ỹ one might iustifie ỹ killing of a man attainted vpõ a Premunire, yet now ỹ same being prohibited by 5. El. ca. 1. if one that hath killed such a person were brought before a Iustice of Peace, he might boldly committe him as a Felon.

In the seconde sorte of Manslaughter (according to M.Bracton) as there be many differences, so is the law also diuerse in the cõsideration of them. For if a Iustice of the Peace within his Countie, or Maior, Bayliffe, or other heade Officer of any Citie or Towne Corporate, within the same towne or Citie, or any other, hauing the Queenes Commission or letters, doe lawfully vppon good cause raise or assemble any number of men for the suppressing of any such persons, as shall bee vnlawfully assembled contrarie to the Statute. 1.Mar.Parl.1.ca.12 And by reson of their still continuing together after proclamation made, bee driuen to set vppon them, and therby anye of the stubburne persons bee slain. This slaughter done vpõ this Necessitie is so iustifiable both in the Iustice himselfe & euery other of his company, that they ought not in any maner to be molested for it. 1.Mar.Parl.1.ca.12.

So if the Shirife or any other do by warrant or vpon hue and crie made, arrest one indited of Felony, which doth resist & is slain therby. This fact done vpon this Necessitie is Iustifiable 22.Lib.Ass.P.55.& Tit.Coron. Fitz.288.289.290. For all these former cases tend to the commendable aduauncement of Law and Iustice.

By the olde Statute. 21.E.1. *De Malefa-*

Foribus in parcis &c. If any Foreſter, Parker, or Warrener, or ſuch as bée in their cõpanye (after hue and crie made vpon offenders within their charge to yælde themſelues, whiche they refuſe to doe but flie and make reſiſtaunce) doe (not hauing any malice prepenſed) kill anye of them, this is no Felonie, nor the partie to bée impriſoned or to forfeit any thing for it.

So if priſoners doe aſſaulte their kéeper, and in his defence he ſtriketh anye of them to the death. 22 lib. Aſs P.55.

And ſo it is if any do attempt to robbe or murder one in his manſion houſe or dwelling place, or nighe any common highway, Carteway, horſewaye, or fotewaye, or Feloniouſly to breake into his dwelling houſe in the night time, and in this their attempt, the partie or his ſeruauntes then with him do kil any of ẏ miſdoers (though ẏ law was somewhat doubtful before) it is now made out of queſtiõ by ẏ Statute 24. H.8.c.5. ẏ hée ſhal not forfeit any thing for that facte, but ſhal go quit. For in theſe caſes of Neceſsitie he defendeth himſelf and his goods againſte Robbers and other notorious euil doers.

But he ẏ in an Affray is of neceſſitie driuen to kill the other in defence of his owne life, after that he hath fled as farre as he can,

Is not so priuileged, for although it bee not accounted Felonie, yet the Statute of *Glouc.* cap. 9: willeth that suche an one be imprisoned til the comming of ỳ Iustices of Gaole deliuerie, and there (putting himselfe vppon God and the Countrey) the whole matter is to bee found by the verdite. And then ỳ king shall graunt him a pardon of Course, but hee shall forfeite all his goods 43.lib.Ass.Pl.3. for hauing killed the Kings lawful subiect. And therefore the Iustice of Peace, may wel vnder the name of Manslaughter in this Statute take vpon him (as I thinke) to cõmitte suche an offender and to take examination and bonde of the informers according to the Statute.

The like is to be done (as it seemeth to me) in case one kill an other by misaduenture against his wil, as by casting a stone, or shooting an arrow, or felling of a tree vnaduisedly, or such like 11.H.7.23.

Voluntate. That Manslaughter which is committed with an euill intente, or in doing an other vnlawful or euil thing, though that whiche is done was not premeditate, is doubtlesse within the words and meaning of this Statute. And so much the more, is that which is done in such a case of malice prepensed as I thinke.

For

For, if two do sodainly fall out, and therupon draw their weapons, and one killeth the other, this is Manslaughter apparantly within the compasse of this Lawe.

So if one be in the company of him that of malice prepensed setteth upon another to murder him, and doth of a sodaine take the murderers part, so that the other partie is slaine, this is Manslaughter in him according as the word is commonly understode.

And so is it if two play at fence, or runne at the Tilte togither, and one of them be slaine: For their first Acte was unlawfull, unlesse it had beene by the Queenes licence, saith Fineux. 11.H 7.23.

And if A. doth assault B. and striketh him, and whilest B. defendeth himselfe, C. commeth to parte them, and is slaine by A. this is Felonie in A. But if they both hadde appointed the place of purpose, to meete there, to fight one with the other, and C. were slaine in seeking to appease them, then wil it be Felonie in both the other. 22.E.3. Coro. Fitzh. 262 and in Dalizons reportes.

If the mother destroy hir childe newely borne, this is Felonie of the death of a man, though the child haue no name, nor be baptized Coron. Fitzh. 418. And the Justice of Peace may deale accordingly. But if a

childe be destroyed in the mothers belly, is no manslayer nor Felone to be imprisoned vpon this Statute, Coron. Fitz. 146. & 263.

The husband minding to make away his wife, did by the aduise of B offer hir a poysoned Apple to eate, & she not mistrusting any thing, gaue the same to hir litle daughter that stode by in the presence of hir husbande, which childe he loued well ynough: ỳ child died thereof. And this was adiudged Murder in the husbande, because he offred ỳ poyson, & then had a wicked intẽt to kil one therewith, & he was the originall occasiõ of this death: But no offence at al in the wife, for she was vtterly ignorant of the euill, & simply gaue it hir childe, taking it to haue bin very good meate. 18. El. Plow. Com. 474.

And if a man lay poyson for Rats, & an other taketh it at vnwares, and dyeth thereof, this is not any wayes to bee layed to the others charge. *ibid.*

If a mad man or a naturall fole, or a lunatike in the time of his lunacie, or a childe ỳ apparantly hath no knowledge of good nor euil, do kil a mã, this is no felonious acte, nor any thing forfeited by it. 21. H. 7. 31. & 3. H. 7. 1. for they cãnot be said to haue any vnderstanding wil. But if vpõ examinatiõ it fal out, ỳ they knew what they did, & ỳ it was ill, thẽ semeth it to be otherwise.

If it appeare, that the partie wounded or poysoned liued a yeare and a daye after the facte, then is it too late for ỹ Iustice of Peace to cõmit the offendor to prison, for then it cãnot be thought, that he died by ỹ meanes, as it seemeth Cor. Fitz. 303. But it is plaine by. 3. H. 7. cap. 1. That if any man be wounded in perill of death, the trespassor ought to be arrested, & put in safe kéeping till perfecte knowledge be had, whether the party woũded will liue or die, & vpõ such matter within the yeare and day, the Iustice of Peace shal do wel to cõmit him. But this is a generall learning in al cases of Murder or Mãslaughter, ỹ the party hurt, must be dead in truth before it be in iudgement of Lawe taken to be either of those offences: for *Voluntas* at this day is not construed for the déede it self, as in time past it hath bin put in vre.

Hitherto of Manslaughter, ỹ dealeth only with ỹ Persõ: other Felonies stretch to goods also, as Robbery ỹ had ỹ name at the first of Robe, because he ỹ with force spoiled a mã, toke his robes or goods frõ him. And in this kinde of Felonie, ỹ law hath no cõsideratiõ of ỹ value of ỹ thing takẽ, because it is takẽ frõ ỹ person, so ỹ it is Robberie though it be but worth a peny. And Bracton calleth him *Furẽ improbum & prædonẽ qui rapit rem alienã.*

Felonies touching the person and goods.

Robberie.

And

And if a man without any title take my goodes againſte my will lying in a place where I am preſent, or do manace to kyll me if I giue him not my purſe, by meanes whereof I deliuer it vnto him, it is Robberie. Coron. Fitzh. 178. and 115.

So, if Theeues aſſaulte me in the highe way for my purſe, and I caſt it downe into a Buſh, (as I flie from them) of purpoſe to ſaue it, and they take it vp.

Certaine perſons toke a man, and compelled him (by manace of killing) to ſweare vppon a Booke, to bring them certaine money, and therevpon he brought it them: this was taken to be Robberie. 44. E. 3. 14 But if a man lie in awaite to robbe me in the high way, and draweth his ſword vpon me, willing me to deliuer my purſe, and I defende my ſelfe, ſo as he hath not his wil, or I take him either by fight, or by hue & crie, it is not now takē to be any Felonie ſaith Stamford, becauſe he hathe not taken anye thing from me: and ſo is ther an opinion. 9. E. 4. 26. But the Lawe was holden to be otherwiſe. 27. Aſſ. Pl 28. & 13. E. 4. 7.

And now ſeing the benefite of Clergie is taken away from Pickpurſes, and Cutpurſes, by. 8. Elizab. ca. 4. let them alſo ſtand in this rancke.

A Burglour, whome Britton calleth a Burgessor, that by night breaketh into a house (with intent to Robbe, kill, or doe other Felonie) though he cary nothing away, is a Felone, 22. Assi. P. 95: & 27. Assi. P. 38. So if he do but breake open the house feloniously by night, though he enter not in, (sayeth Staf. Fo. 30.) But if this be done by day it is not taken to be Felony at this day without some further felonious acte done (sayth he) yet the Booke Tit. Coron. Fitzh. 178. & 185. do not make any difference. And the Statute. 1. E. 6. ca. 12. taketh awaye Clergie and Sanctuarie, in case where one is conuicte or attainted of Breaking any house by day or by night, where anye person being in the same, shall be thereby put in feare (not speaking of any other fact.) And Britton defineth a Burgessour to be he that feloniously in the time of peace breaketh open Churches, or other houses, or the walles or gates of Cities or Burghs, whereof perhappes they had their first name, or rather may be deriued of Bowre, that is a Chamber, or inner roume, and Laron a Theefe. Burglarie.

Burning of a house malitiously and wilfully, was Felonie at the common Lawe, as appeereth by Bracton, *West.* 1. ca. 15: 10. E. 4. 14: & 3 H. 7. 10. And Brit. (Fol. 16.) sayth, that such Burning of houses.

such as burne houses or corne feloniously, ought to be burned. And one burned a barn feloniously by night which was adioyning to a house: and it was holden Felonie at the Common Law. 11 H 7.1. And if a mans wicked intent were onelie to burne ỹ house of A. and thereby the house of B is also burned, the burning of this laste house is Felonie, because it ensueth of the fire that was firste kindled, Plowd. Com. 475.

Felonie of goods.

Other Felonies there be of Goods onely, called Larcinie of the Latine worde *Latrocinium*, and it is punishable eyther by death or by discretion of the Justices, which difference groweth by the value of the thing stolen: for if it exceede not twelue pence, the fact is but *Petit Larcinie*, and the offendor is not to die for it, W. 1. ca 15. Britton F. 22. Cor. Fitz. 404 406. although ỹ Inditement shal suppose the facte to be done *Felonicè* as in the case of Mayheme. 27. H. 8. 22.

But it seemeth by 8. E. 2. Coron. Fitzh. 415. that if he be conuicte of one petite Larcinie, and after committeth an other, and is conuicte thereof, and so a third, when all these valued togither, do amount aboue xỹ. pence, thẽ for ỹ last he shal suffer death, & Brit maketh ỹ third offence alwayes death. And if diuers ioine in the stealing of goodes, any thing

thing amounting aboue the value of twelue pence, it is Felonie punishable by death in them all Coron. 404.

Bracton defineth *Furtum* to bee *Contrectatio rei alienæ fraudulenta, animo furandi, inuito illo, cui res illa fuerit.*

The wife therefore can not be accounted a Felone, though she steale the goodes of hir husband 21. H. 6. Coron. Fitz. 456. And if shee steale an other mans goodes by the compulsion of hir husbande, it is no Felonie in hir 27. Ass. Pl. 40. But if she doe it at his commaundement onelie, Bracton saith it shall not excuse hir. And the wife may of hir self commit Larcinie, and shall suffer for it Coron. 383.

In some case a man may be hanged for taking his owne goodes, as if he first deliuer them to one, to kepe, and craftily of purpose to charge him, he stealeth them from hym, this is Felonie, by 7. H. 6. 43. 13. E. 4. 10. & 5. H. 7. 18.

If a man steale out of an other mannes ground, wilde beastes whych be accompted *Nullius in bonis*, as Deere, Conies, Phesãts, or Doues, being abroade at their libertie, or Fish in a riuer, this is no Felonie, 22. Ass. Pl. 95. But if he take yong Pigeons in the house, or yong Goshauks ẏ cãnot flie out of their

their ayre, or fishe out of a pond or truncke, it is Felonie. 18. 4. 8.

To steale Géese, Dockes, Hennes, Peacocks, or Turkies, is Felonie, for they bée accounted *in bonis*.

So is it of a tame Déere, if the stealer knewe it to be tame: and also the flesh of any Déere that is killed by an other, the taking away of such a thing with a felonious intent, is Felonie for they be also then reckoned *in bonis* and valuable. But is to take away a Bore with Charters of lande in it, or a Warde, is no Felonie, for they be not personall, but reall goodes, whereof there can be no Felonie committed. 10. E. 4. 15.

And therefore also, if with a felonious intent one cutte down and steale away a trée, or corne that is standing, or robbe an Orchard of the fruit growing there, it is no Felonie being at that time in manner parcell of the ground, whereof there can be no Felonie committed: but if the trée or corne were cutte downe, or the fruit gathered before by an other, and lefte there, and then one stealeth them, it is Felonie, for at that time they were very personall Cattels, 18. H 8. 2. & Coron. Fitzh. 119. & 256.

If a man clippe the woll from my sheeps backe, or doe kill my sheepe, and steale the skinnes

skinnes, leauing the bodies behinde, this is Felonie of goods, Dalizon. For the verye sheepe themselues were my goodes, & might be stollen.

But the firste finder and concealor of tresure founde, although he keepe it wyth a felonious intent, or he that stealeth a wrecke of the Sea, or waued goodes, whileste they bee in that nature, seemeth not to bee chargeable in Felonie, by 22 Ass. Pl. 99. because the owner thereof is not knowen as yet.

If a man deliuer his goodes to another to keepe, and hee doe fraudulently and wilfully consume them or conuerte them to hys owne vse, this is no Felonie, because *prima contractatio*, and firste possession was not *inuito domino*, but of his owne deliuerie. 13 E. 4. 10.

And yet it is holden, if I bargaine with one to carry certaine bales of Woade to *Crambrooke*, and he carrieth them to *Canterburie*, and breaketh the Bales, and taketh out the Woade, & conuerteth it to his own vse, that is Felonie. So if I deliuer a Tun of Wine to him to carry, and he taketh the Wine out of the Tunne, it is Felonie. For here it may be saide, that neyther the verie Woad, nor the Wine were deliuered hym

in that kinde. But if he sell the Tunne of Wine, or the Bailes of Woad togither, as he receiued them, then is it no Felonie, because he had them in that sorte of the deliuerie of the owner 13.E.4.9.&10.

But if an Inkéeper set a péece of plate before his guest to drinke in, and hée carryeth it away with him, this is Felonie: For here the guest had no possessiō by the owner, but onelie the vse of the thing 13.E.4.9.

So is it if the guest do steale the sheets in which he lyeth, and be taken ere he goeth out of the house, as in the Hall, after that he is come out of the Chamber, Coron.Fit. 204.& Dalizon.

If a shepheard steale the shéepe, or a Butler the Plate, or an other manne any other thing that is in his charge and kéeping, it séemeth by the Justices (3. H 7. 12.) that it shoulde not be Felonie, vppon the former reason, whiche séemeth to haue bene the antient lawe of the lande also. For Glanuill in his 10 Booke cap.13. sayth, *Quod Furtum non est, vbi initium habuerit sua detencionis per dominū rei.* But because in some of these cases of Seruants, there grew much inconuenience vnto Maisters, therfore 21.H.8 ca. 7. made it Felonie, if Seruants of the age of eightéene yeares that had anye goodes of their

their Maisters deliuerie to keepe to their vse, shoulde fraudulently conuert the same to their owne vses, to the intente to steale them, if it amounted aboue to the valewe of fortie shillings, wherein Apprentices be excepted. And this statute being afterwarde discontinued, was reuiued 5. Elizab. cap. 10. whereof more shal be séene when wée come to the charge. But thus much for this place and purpose, to giue some little direction to the Iustice of Peace,) may at thys tyme suffise.

VVhat things any twoo *Iustices* of the Peace may doe out of the *Sessions*.

Cap. xxii.

THe auctoritie and power of one Iustice of the Peace (without ỹ Sessions) thus perused & passed ouer, let vs examine the like power of twoo, bothe in generalitie, and in particular.

It is vniuersally true, that whatsoeuer thing one Iustice of the Peace alone is per-

mitted to doe, eyther for the conſeruation of the Peace, or in the execution of the Cō-miſſion or Statutes, the ſame alſo may bee no leſſe lawfully perfourmed by two (or mo) Iuſtices, except it bee in a very feiwe caſes, where ſome Statutes do ſeeme ſpecially to appropriate the execution thereof to ſome one certaine Iuſtice, eyther in reſpecte that he is Next to the place, Eldeſt of the Quo-rum, or ſuch like.

The power of two Iuſtices of the Peace, in puniſhing of Riots, &c.

But we will proceede by particularities, and becauſe the firſt place (of right) belon-geth to the Peace, (as wherein the office of this Iuſticer chiefly conſiſteth) lette vs here ſupply in two Iuſtices that power in puni-ſhing Riots, Routs, and vnlawfull Aſſem-blies, whyche wee ſayde before to bee wan-ting in one: And that ſhall wee the better doe, if wee firſte of al lay open the Statute of King Henry the fourth, contayning a moſte ample auctoritie, as well for the re-preſſing, as for the Recording of the ſame, and then adioyne ſomewhat out of ſome o-ther Statutes.

IF any *Riot, Aſſemblie, or Rout* of people a-gainſte the lawe be made, the Iuſtices of Peace or 3. or 2. (at the leaſt) of them, dwel-ling moſt nigheſt to the place, & the Shirif. (or

(or Vnderſhirif) of the Countie, ſhal come with the power of the Countie (if neede be) to areſt them, and ſhall arreſt them, & ſhal haue power to record that which they ſhall find ſo done in their preſence againſt the law: And by that Record ſuch offēdors ſhall be conuicted in maner and fourme as is cōteined in the Statute *of Forcible entries*, (*viz.* 15. R2. c. 2.) And if ſuch treſpaſſers be departed before their coming, then theſe Iuſtices of Peace, or thre, or two of them, ſhall diligently enquire within a moneth after ſuch *Riot, Aſſemblie, or Rout* made: and therof ſhall heare and determine according to the lawe of the lande: and if the trueth may not be found in the maner as aforſaid, then with in a month then next following the ſaid Iuſtices and Shirif (or vnderſhirif) ſhal certifie before the King & his Councel all the dedes & circumſtāces therof, which Certificate ſhall be of like force as the verdit of twelue mē &c. And if ſuch offendors do trauerſe the matter ſo certified, then the Certificat and Trauerſe ſhall be ſent into the Kings Bēch to be tried & determined as law requireth. And that the ſame Iuſtices and Shirifs ſhall doe execution of this Statute, euery one vpon paine of one hundred pound, to be payed to the King, as ofte as

they shall bee founde in defaulte. 13. H. 4. cap. 7.

Maintenãce & embraceríe.

Wherevnto the Statute (19 H. 7.) **addeth** that if the saide Riotte, Route, or vnlawful assemblie, be not founde by the saide Iury, by reason of anye maintenaunce or embracerie of the saide Iurours: then the same Iustices and Shirife (or Vndershirife) shall also certifie the names of the maintainours and embraceours in that behalfe (if anye bee) wyth theyr misdemeanours that they knowe, vppon payne of euerye of the said Iustices & Shirif (or vndershirif) to forfeit twentie powndes (if they haue no reasonable excuse) for not certifying the same: which Certificate so made, shal be of like force as before &c. And euery person duely prooued to bee a mainteynor or embracer in the same, shall forfeite twentie powndes to the King, and shall be committed to warde, there to remayne by the discreation of the Iustices. 19. H. 7. cap. 13.

Assistance.

Herevnto also the Statute (2. H. 5.) **adioyneth further**, that the Kings liege people (beeing sufficient to trauaile) shall bee assistant to these Iustices, Shirife (or Vndershirife) when they shall bee

bee reasonably warned, to ryde wyth them in aide to resiste suche Riots, Routs and assemblies, vppon payne of imprisonment, and to make fine and ransome to the King. Prouided alwayes that the saide Iustices, Shirife (or Vndershirife) shall doe their sayde offices at the Kings costes, in going, tarrying, and retourning, by payment thereof to bee made by the Shirife by Indenture betweene him and them, of the sayde payment. And that suche Rioters attaynted of greate and hainous Riots shall haue one whole yeares imprisonment at the leaste, without beeing lette oute of prison by Bayle, Mainepriſe, or in anye other manner during the yeare aforesaide: & that the Rioters attainted of petite Riots, shall haue imprisonment as beste shall seeme to the King and to his Councell. And that the fines of suche Riotours attainted, shall bee by the same Iustices encreased and putte in greater summes than they were wonte to bee putte in suche cases before that tyme in ayde and supportation of the costes of the Iustices and other Officers aforesaide in this behalfe. 2. H. 5. ca. 8.

At the Kings charges.

Capias and Proclamation.

Nowe, if it bee witnesſed by twoo Iuſtices of the Peace, and the Shirife, by Letters vnder their Seales, to the Lord Chauncelour of *England*, that any murders, manſlaughters, batteries, robberies, aſſemblies of people in great number in maner of Inſurrection, or other rebellious Riots, haue bene done, and that ſuche offendours haue withdrawen themſelues, to the intent to auoide the execution of the common Law, then the Lord Chauncelour may make a Writte of *Capias*, and thereupon (if neede be) a Proclamation, &c. 2. H. 5. cap. 9. whiche Statute was made to endure till the nexte Parliament, and ſo diſcontinued: but it was reuiued by 8. H. 6. and made perpetuall: which moreouer ordayneth, that (beefore thys Writ of *Capias* ſhall bee awarded) two Iuſtices of the Peace, and the Shirife of the Shire, where ſuch Riot is ſuppoſed, ought to witneſſe, that the common voice and fame runneth in the ſaide Countie, of the ſame Riots. 8. H. 6. ca 14.

The Letter (or Text) of theſe Laiwes, beeing thus laide downe, lette vs alſo ſee what expoſition and helpe M. Marrow and others doe bring to ſome partes thereof, namely, to that of King Henry the fourth.

Vnder

Under the wordes, Power of the Countie, the Iustices, Shirife, or Vndershirife, oughte to haue the aide and attendaunce of Knightes, and of all maner of Gentlemen, Yeomen, Labourers, Seruauntes, Apprentises, and Villaines. And so likewise of Infants, that bee aboue fiftéene yeares of age. For all of that age were boude to haue harnesse by the Statute of *Winchester*. But women, men entred into the ministerie, and such as bée decrepite, or doe labour of anye continuall infirmitie, shall not bée compelled to attende. And it resteth in the discreation of the Iustices and Shirife, or Vndershirife. How many, or how fewe, they will haue to assist them, in making the arrest. But yet after such arrest made, the Power of ỹ countie, is bounde to goe with the Shirife to the Gaole to aide him thither also: whiche is otherwise in the case of a Felon taken by Hue and Cry, for there when the Countrie hath deliuered him to ỹ Shirife, they are discharged, Mar.

This auctoritie of assembling the power of the countie, and of arresting & imprisoning Riotters til due execution of law were done vpon them, was once before this time (namely 2 R. 2. 6.) committed to some, & was by & by after resumed in the same yeare of

the same kings raigne, as a thing too grée uous to be suffered, that any man should bé imprisoned without an Inditement (or *Sine legali iudicio parium suorum*, as *magna Carta* speaketh) first had against him.

But nowe, if information bée made to two Iustices of the Peace, that certain persons bée riotously assembled at *Dale*, and they (assisted wyth the Shirife or Vndershirife) doe gather people to suppresse it, and when they come to the place, they finde no Riote there, yet are they excusable for the assemblie of Power made by them, because they did it vpon information. And if they do it without information, and find a Riot indéede when they come, then shall they not onelie bée excused for making suche assemblie of their owne heads, but may also lawfully proceed to punish the offendors. Fitz. 17.

Recording of the *Riot.*

And that punishment muste be grounded either vpon their Recorde of the thing done in their owne presence, or else by enquirie vpon the oath of other men. And therefore if two Iustices of the Peace (assisted with the Shirife or Vndershirife) do sée a Riotte, they may command the Riottors to be arrested, & may record the Riot without other inquiry, and the parties shall bée so concluded thereby, ỹ they shal neuer be receiued to Trauerse

(or

(or deny) it: But otherwise it is, if they do not see it themselues 14.H.7. (as M.Fitz.Tit. *Iustice del peace* 9. reporteth) who saith moreouer (in his booke of Iustices of ỹ peace, Fo.18.) that if they doe so record a Riote, as though they had seene it, the parties shall bee stopped thereby, although there were neuer any such Riot by them committed: for (saith he) the view of a Riot is neuer to be trauersed. Likewise, if the Iustices of Peace bee disturbed by Riotors in cõming to their Sessions, they may (without any Inquirie) make their record of it Fitz.17:& 7.E.4.18.

The Record which these Iustices ought to make, must bee by writing, and muste remaine with the one of them: and they (and none other Iustices) ought to imprison the Riotors, and to assesse their Fine, & cause ỹ same to be estreated into the Escheaquer. If they see the Riot, & the Riotors escape, yet they ought to Record it: but then they cannot arrest the Riotors at another time, neither can they make any Processe vpon that Record, neither ought it to be kept amongst the Records of the Peace, but it must be sent into the Kings Bench, that Processe may be there made vpon it. And in ỹ case ỹ parties are not to be admitted to their Trauerse there, but must of necessity make fine for it.

If

If these Iustices come to sée one Riotte, and another Riotte is made in their presẽce, they may Recorde that. So if the Iustices & the Shirife, or Vnderthirife be assembled at a place for an Arbitrement, or such other priuate cause, and a Riotte appeareth to bée cõmitted in their presence, they may Recorde it also. But if the Riottours (seeing them cõming) do flie into another Countie, and doe committe a Riotte there, these Iustices can not Recorde that Riotte. If the Riottours make a Riotte vpon the Iustices and Shirife that do come of purpose to arrest them, they may Recorde that. And it séemeth that they may likewise do so (though M Marrow denyed it) if they come for an other cause and such a Riotte bée done vpon them.

If a mã be slain in the Riot, or Maymed, or if Rescous bée done to an Officer, the Record must be, *Riotosè occidit*, or *Riotosè Mayhemauit*, or *Riotosè rescussit*, & not *Felonicè* nor simply *Rescussit*: for their power in this case is restrayned to the Riot only, & therfore the parties may (notwithstãding their Recorde) pleade not guilty, to the Felonie, or Rescous, though not to the Riot it self.

If they make a Recorde of a Riotte, & doo imprison the partie till he haue made Fine, and it do afterward appeare by the Recorde

it

it selfe, that the Acte which they recorded is no Riot, yet be the parties without remedy. And if a man bée bound to the Peace, & such a Recorde of a Riotte is afterwardes made against him, and others, hée shall not iustifie, nor pleade, not guiltie, in a *Scire facias*, vpon his Recognusance. Mar.

But although these Iustices, Shirife, or Vndershirife, doe not goe to sée the Riotte, yet maye the two Iustices enquire of it within the moneth after it: and they all are also to make Certificat within a moneth after that, according to the forme of the Statute. And although this Statute saye, that the same Iustices shall doe it, yet if other Iustices of the Peace there doe it, that is sufficient. Mar. So that if two Iustices and the Shirife goe to sée a Riotte, and other two Iustices make the Enquirie, nowe the one sorts or the other of them, with the Shirife or Vndershirife may Certifie it. Enquirie of the Riottes, and certify.

If this enquirie bée not made within the moneth, yet it is good, but then no good Certificat can bée made thereof: So if the Enquirie bée within the moneth, and the Certificat not made within a moneth after, that is not good. Mar.

But if the Iustices doe enquire within the moneth, and doe giue daye to the Iurie

to

to yéeld their Verdite after the moneth, that is good ynough. If the Enquest find, that the Riot was made by xij. persons, wher in déed it was made by C. persons, it may be certified so, and then the Certificat (& not the Inditement) shalbe takē: but if they varie only in the day, then the Inditement shall be préfered to the Certificat. And if the Inditement be of xij. persons, & the Certificat of xij. persons in harnesse, the Certificat shal be préferred. So, if the Inditement speake only of a Riotous assault, they may Certifie of a Riotous assault, batterie, and mayheming.

If foure Iustices, the Shirife and Vndershirife, goe to sée a Riote, and two of those Iustices and the Shirife ioyne in one Certificat, and the other two ioyne with the Vndershirife in an other Certificat, that Certificat (wherevnto the Shirife is partie) shall bée préferred: for in hys présence the Vndershirife hathe none auctoritie. But yet if the Certificats bée otherwise equall, then the best shall be taken for the Queene. If (after the Riote séene, and the Enquirie made) one of the Iustices be putte out of the Commission, then cannot he Certifie. But if he had Recorded the Riot vpon the view thereof, and the Rioters had escaped, yet the might he Certifie Mar.

The

The force of this Certificat is, but only to put the parties to answere: and forasmuch as it is of the nature of a declaration against them, it ought to comprehende the certaine yeare and day, though peraduenture (as M. Mar. holdeth) it needeth not to expresse the Additions of the parties, being not within the wordes of the Statute, 1 H. 5. ca. 5.

Furthermore, whereas this Statute speaketh of the paine of C. li. to be layed vppon the next Iustices: Yet if other than the next Iustices doe performe the office, that shall excuse them that be the nexte Iustices to the place. And that is ỹ cause why I haue taken leaue to place these things before, vnder the auctoritie of any two Iustices generally. Yea, all the Iustices of Peace within the Commission, how far off soeuer they dwel, ought (if they haue notice of suche a Riotte, Rout, or Assembly,) to supply ỹ defaulte of the next Iustices. For so it was now lately adiudged in the Starre Chamber. Howbeit that paine of an hundred pound was layde vpon the next Iustices onlie, and the residue were fined by discretiõ of that Court. Lastly, euery of these Iustices shal be excused of this penaltie, by the not cõming of the Shirife: But yet they ought (in this seruice) to sende for the Shirife, and not be for thẽ, Mar. Next Iustices.

Thus

Thus muche of the Riottes after this cõsideration: now a little for the furtherance of the Iustices in their execution, and then to other matters.

A Precept to the Shirife, to warne the Countrie to enquire of a Riotte.

Kane. GEorgius Multõ & Wilhelmus Lambard *duo Iusticiariorum &c. assignatorum, Vicecomiti eiusdem comitatus Salutem. Ex parte dicta Domina Regina tibi præcipimus, quòd venire facias coram nobis apud Isn comitatu prædicto.1. die Octob. proximè futuro.24. probos, sufficientes, & legales homines de comitatu prædicto, quorum quilibet habent terras & tenementa, infra dictũ comitatum liberè per chartam ad annuum valorem 20. solid. aut per copiam Curiæ ad annuum valorem 26. solid. & 8 denars. aut per vtrumque vltra omnes repriſas, ad inquirendum pro indẽnitate noſtra in hac parte ſuper ſacramentũ ſuũ, Si A.B.C.D.E.F. & alij malefactores et pacis dicta Domina Regina perturbatores ignoti, domũ cuiusdam G.H. apud* Ightham *prædictã, riotoſe fregerint & in ipſum inſultũ fecerint, & vulnerauerint, contra pacem dicta Domina Regina, & contra formam Statuti in tali caſu, 13. H.4. e-*

lim

lim regis Anglie editi & prouisi. Et hoc nullatenus omittas sub pœna 20. lb. quam incursurus es si in executione premissorum defeceris. Et habeas ibi tunc hoc præceptum: Testibus prefatis G.M. *&* W.L. *20. die Septemb. Anno regni dicte Domine nostre Eliz. 23.*

The Inquirie.

Inquisitio pro Domina Regina &c. (as before in forcible entries) *coram* Georgio Multon & Wilhelmo Lambard, *&c. Qui ad hoc inrati et onerati, dicunt super sacramentum suum, quod* A.B.C.D.E.F. *simul cum alijs malefactoribus, & pacis dicte Domine Regine perturbatoribus, ignotis ad numerum septem personarum, modo guerrino arcaiati, vi & armis, viz. hawberdis, gladijs, arcubus, & sagittis, 19. die mens. Sep. vlt. preterito, apud* Ightham *in comitatu predicto inter horas octauam, & nonam, post meridiem eiusdem diei, Domũ* G.H. *de* Ightham *predict.* Yeoman, *scituatã in* Ightham *predicta. riotose fregerunt, & in ipsum* G.H. *tunc & ibidem insultũ fecerũt, ac ipsũ tunc & ibidem verberauerunt, vulnerauerunt, & indignis modis tractauerunt, ita quod de vita eius desperabatur in magnam pacis dict. Domine Regine perturbationem & populi terrorem ac contra formam Statuti de riotis, routis, & congregationibus Gentium*

Anno 13. H. 4. *olim regis Anglia progenitoris dicta Domina Regina, editi & promisi.*

The Certificat to the Queene & hir Counsell ought to be made by the two Iustices & the Shirife, or Vndershirife, which may be done in English, after the order of a Letter, and as the case shall require.

But the Record of the Iustices, and the Shirife or Vndershirife (if they will proceed that way) may be in this manner.

MEmorandum quod 20. die Septem. anno regni Domina nostra Elizabe. dei gratia &c. 23. Quæstus est nobis Georgio Multō & Wilhelmo Lambard, *duobus Iusticiariorum &c. assignatorū, &* Thomæ C. *sub vicecomiti comitatus eiusdem, quidam* G. H. *de* Ightham *in dict. comitatu* Yeoman, *Quod* A. B. C. D. E. F. *&c. & alij malefactores & pacis dicta Domina Regina perturbatores ignoti domum eiusdem* G. H. *apud Ig. predict. riotose fregerūt, et ibidem in ipsum* G. H. *insultum fecerunt, ac ipsum vulnerauerunt contra pacem dicta Domina Regina ac proinde petyt à nobis sibi in hac parte remedium apponi: Quibus quidem querimonia & petitione auditis, nos dict.* G. M. W. L. & T. C. *ipso eodem dicto die ad domum predictam accessimus in propriis personis nostris, ac tunc & ibidem inuenimus prafatos* A. B. C. D. *&c. ad numerum septem personarum modo guerrino arraiatos, vz. gladijs, pugionibus, loricis,*

eis, galeis, arcubus & sagittis, riotose in simul aggregatos domum prefatam fregisse. multa mala in ipsum G.H. *ibidem comminantes in magnam pacis dicte Domine Regine perturbationem ac populi sui terrorem, necnon in contemptum Statuti de Riotis, Routis, & congregationibus populorum Anno* 13.H.4. *olim regis Anglie, progenitoris dicte Domine Regine, editi ac provisi. Ac propterea nos prefati* G.M.W.L.& T.C. *corpora dictorum* A.B.C.D. *&c. arrestari, ac proxime Gaole dicte Domine Regine in comitatu predicto duci fecimus, per Recordum hoc nostrum coram vobis in presentia nostra. In cuius rei testimonium nos prefati* G.M.W.L. & T.C. *huic dicto recordo nostro, sigilla nostra apposuimus, Datum apud* I. *predict. die & anno supradictis.*

And nowe wishing the two Iustices of Peace in this matter to loke backe into y which hath bene said before of forcible entries and Riots in the person of one Iustice, let vs make spæde to other Statutes.

Any two Iustices of the Peace, may imprison for .x. dayes, the Maister that giueth: & for .xl. daies the seruant that taketh more wages than after the rates thereof made: & may imprison for a whole yeare, suche seruaunt, as shall bee Conuicted before them by his owne confession, or by the Othes of two honest men, to haue made

Seruants & Labourers.

any assault vpon his maister, maistresse, or other person hauing the charge of him, or of the worke: and they maye appoint any woman (being vnmarried, of the age of twelue yeares, and vnder fortie) that is out of seruice, and that they shal thinke meete to serue to bee retained by their discreatiō, and may vpon hir refusall commit hir to Warde, till she wil be so bound to serue 5. Eli. ca. 4.

Begge for fees. Roag. Seruingmē.

Any two Iustices of Peace, may licence such as be deliuered out of Gaoles, to begge for their fees, or to trauel to their Countrie, or friendes: and may giue licence for fortie days to a Roge that is marked: & may make testimoniall to a Seruingman, that is turned away from his maister, or whose maister is deade: 14 Eliz. ca. 5: & 18. Eliz. ca. 3.

Surcharged with poore.

Such two Iustices may certifie at ỳ quarter Sessions that a Citie, or Towne Corporate, of the Shire (being no countie of it self) is surcharged with poore, togither with the names and number of them, that order may bee taken there for their relefe: & they maye Licence diseased persōs (liuing of almes) to trauell to Bathe, or to Bucstone, for ease of their griefe. 14. Eliz. ca. 5.

Licence to go to *Bath* or *Bucstone*.

Chaunged high way.

By the ouersight of two such Iustices, and twelue discrete men of the Hundred, and Hundreds adioyning, any persō (within the Wealde

Wealde of *Kent*) may make in his owne lãd a new highway, more commodious thã the olde, 4 H.8.ca.6.

Two such Iustices may once euery yeare appoint Ouerseers for that whole yeare following of cloath to bée made or solde, in any towne (not being Corporate) and maye charge them vpon their oathes, to sée execution of some partes of the Statute. 3 E.6.ca. 2. yet in force. Appoint Ouerseers of Cloth.

Within fiue dayes after acculation had, that any person hath disturbed a Preacher, and after his committing to safe custodie by one Iustice of the Peace, one other Iustice of that shire muste ioine with him in the examination of the Offender, & maye proceede to finde him guiltie by his owne confession, or two witnesses, and thereupon commit him to the next Gaole, for three monethes. 1 Mar. Parl. 1. ca. 3. *quære* of the continuance of this Statute, as before. Disturbe a Preacher.

Any two Iustices of the Peace of the Countie, where any Logwood (*alias* Blockwood) shal be founde (in whose handes soeuer it bée) maye openly burne the same, as forfeited. 23. El. ca. 9. Logwood.

VVhat things, some twoo Iustices of the Peace may doe out of the Sessions.

Cap. xxiii.

IT falleth out many times that the Statute lawes regarding some Iustices aboue others, either for the opiniõ of the abilitie or learning that they should haue (being of the *Quorum*) or for the aduantage and facilitie that they haue to dispatch the affaire by meanes of their neareneſſe and dwelling, or for the indifferencie that they are likely to vſe in the handling of the cauſe (as being neyther of kindred nor alliance to any of the parties) doe many times make choiſe of two Iuſtices, and doe either altogither cloſe the hands of the reſt, or elſe do chiefly repoſe the truſt in theſe that bée ſo choſen & elected.

Among thoſe of this kind, the Bailement of priſoners worthily craueth the firſt place, whether you reſpect the weight of the matter that it concerneth, or the length of the diſcourſe that it requireth, the one tending to deſired libertie, and the other comprehending

ding great varietie.

This sauing then, or deliuerie of a person out of prison, before he hath satisfied the Law, is vttered by three termes in our Statute lawes, that is to saie, Bailement, Mainprise (or manucaption) and Repleuine. And they bee indifferently vsed to expresse that suertie whiche the prysoner is to finde in such a case: For that which Bracton and the Statute of W.1.cap.15. made 3.E.1. doe speake of setting at libertie of Accessaries by the wordes *Replegiari*, and of letting out by sufficient Pleuin: Britton and the Register doe expresse by finding of Mainprise: the Statute 5.E.3. cap.8. by letting to Baile: that of Marlebrige cap.27: made 52.H.3. by *tradi in ballium vel Replegiari*. And the Statute of 1.E.3.ca.9. making mention of y writ *De Homine Replegiando* to bee directed to the garden of a Forest, declareth the effect therof to bee, that hee should Repleuy the prysoner by good Mainprise. The Statute 23.H.6. ca.10. that cõmaundeth the Shirife to let out of prison (such as he hath arrested vpon Enditements of trespasse) vpõ reasonable suertie of sufficient persons, calleth the same a letting to Baile or Mainprise. And lastly 1.& 2.Ph.& Mar.c.13. seemeth to make al the three wordes *summus* and of the same signification.

Differences betweene *Bailement, Mainprise & Repleuine.*

Yet it seemeth that Replevine had his originall of the word Pledges which denoteth them that vndertake for the partie, that he shall abide to bee iustifyed by Lawe. And is vsed in diuerse other cases, as in Replevine of Cattell vpon a distresse. Replevine of Franchises in a *quo Warranto*, Replevine of Lande vppon a *Grande Cape*, in olde time, and Replevijng of the person of a man in case of Villenage and this our case.

Bailement is deriued from the French tearme Bailler. And that also commeth of ỹ Greek (βάλλειν) they both signifyng to Deliuer into hand: For he that is Bailed is taken (or kepte) out of prison and deliuered (as it were) into the handes of his friendes as Suerties for him, whereof also the worde *Manucaptio* (or Maineprise which is all one) giueth good euidence, the one mentioning the deliuery, the other the receiuing. And in this respecte, the Booke of the *Norman Customes* calleth Bailement a liue prison, for that the partie is therby become prisoner to his friends that do vndertake for him. But Bailmēt & Mainprise haue bin takē to differ in ỹ practise of our cōmon law, for he which is properly Bailed by ỹ Iustices of any court hath bene neuertheless reputed to be a prisoner ther stil, & his suerties to be (as it wer)

his

his speciall gardeins, otherwise it hath bin thought of him that is let to Mainprise, as may be seene by the Booke cases 33. E.3: & 36.E.3.Coron.Fitzh.12.& 13: 7.H.6.42: 31.H. 6.10: 38.H.6.23: 9.E.4.2: & 21.H.7.33. But at this day how long he shall be adiudged to be a prisoner, *Et in Custodia Marisealli Mariscalciæ, &c.* that is Bailed in the Kings Bench, the custome of the Courte it selfe must rule the matter: for it differeth somewhat (if I be not deceiued) from those opinions. Howbeit, forasmuch as in our course (concerning Iustices of the Peace) it is not so needefull to stay vppon the difference betweene them, as to proceede to disclose the vse and maner of them: Let vs therefore examine the power of the Iustices of Peace in this behalfe.

It seemeth, that Iustices of the Peace might (after the Statute of 34. Ed.3 cap.1. (that made them complete Iudges) haue letten to baile such persons as were indited of Felonie before them in their Sessions, as the Iustices of the Kings Bench vse to doe, but not such as were arrested for suspition of Felonie, and not endited thereof before them, because before the enditement they were no Iudges ouer them: And for helpe herein, it was ordayned (1.R.3.cap.3.) that

R.v. euerie

euery Iusticeof Peace might lette to Baile any suspectes of Felonie. But that Law begatte some inconueniences, and therefore it was sone after repealed (by 3. H.7. cap. 3.) whiche lefte power to twoo Iusticees of the Peace (the one beeing of the *Quorum*) to lette anye prisoners (mainpernable by the Lawe) to baile to the nexte generall Sessions, or the nexte Gaole deliuerie, and willeth, that they shall then certifie suche baile taken, vpon paine to forfeite for euerye defaulte (therevppon recorded) tenne poundes, to the Kyng 3. H.7. cap. 3. And here againe there sprang vppe an other inconuenience: for then Iustices of Peace woulde not sticke to borrowe one an others name, (as manye yet still doe) and by that meanes defraude the good meanyng of the Statute: Wherevppon it was lastly further prouided (by 1. & 2. Phil. & Mar.) as followeth:

Bailement of prisoners, and examination before they bee bailed.

That no Iustice nor Iustices of Peace, shoulde lette to baile anye person contrarie to the sayde Statute of *West.* 1. cap. 15. And that no person, beeing arrested for Manslaughter, or Felonie, or for suspition of eyther of them, (beeing baileable by

by the Lawe) shoulde bee bailed, by anye Iustice of Peace, if it bee not in open Sessions, or by twoo Iustices of the Peace at the leaste (the one of them beeing of the *Quorum*,) and the same Iustices to bee present togither at the tyme of the saide Bailement: and that they shall certifie (in writing, subscribed, or signed, wyth their owne handes) the sayde bailement or Mainprise, at the nexte generall Gaole deliuerie, to bee holden wythin that Shire, where that person shall be arrested, or suspected: And that the saide Iustices, or one of them, (beeing of the *Quorum*,) when suche prisoner is brought beefore them for Manslaughter or Felonie, shall beefore anye bailement) take the examination of that prisoner, and the information of them that bring hym, of the facte and circumstaunces thereof, and the same, or so muche thereof, as shall bee materiall to prooue the Felonie, shall putte in writing beefore they make that Bailement: whiche examination and bailement, the saide Iustices shall certifie at the nexte Gaole deliuerie within the limittes of their Commission: And the saide Iustices shall haue auctoritie by

by this Acte, to binde all ſuch by Recognuſaunce (or Obligation) as doe declare any thing materiall to proue the ſaide Murder, or Manſlaughter, offences, or Felonies, or to be Acceſſorie or Acceſſories to the ſame, as is aforeſaide, to appeare at the ſaide nexte Gaole deliuerie, where the triall thereof ſhall bee, then and there to giue euidence againſt the partie, at the time of his triall, and ſhall certifie all and euerie ſuche bond, in like maner, as is aboueſaide of the Bailement and examination 1. & 2. Phil. & Mar. cap. 13.

This Statute of Bailement I haue recited the more at large, becauſe it both comprehendeth ſome ſuch other things as muſt concurre with the Bailement of the priſoner, and giueth me occaſion to ſette downe the Statute of *W.* 1. and to ſhewe what perſons be baileable by the Law: for, to either of theſe it referreth it ſelfe (as you haue ſeene) and is alſo reſtrained by them.

Nowe by the Statute of *W.* 1. cap. 15. Priſoners that bee before outlawed or haue abiured: prouours: felons taken wyth the maner: thoſe that haue broken the Kings priſon: notorious and proclaymed theeues: thoſe that are appealed of prouours, ſo long as the prouours bee liuing (if they be not of good

good fame:) those which are taken for felonious burnings, or for falsifying the Kings mony or his Seale: or which are taken vpon excommunication, or for open euill, or for treason touching the King himselfe, or for the death of a man, or by the commandement of the King himselfe, or of hys priuie Counsell, or by the (absolute, and not ordinarie) commaundement of the Kings Iustices, or for the Forest: be not repleuisable by the common Writ nor without Writ by Shirifes, nor other gardines of prisons. But hee that is taken for light suspition: or is indited of *petite Larcinie*, (not being giltie before of other *Larcinie:*) those that be charged with the receit of theeues, or felons, or of commaunding, or force, or aide: or charged wyth Trespasse, that toucheth not losse of life, nor member: and he that is appealed by a Prouour (beeing no common theefe nor defamed) after the death of the prouour, is baileable by that Statute.

Againe, the Statute 23. H.6. cap.10. prohibiteth those that bee in prison by condēnation, execution, *Capias vtlagatum*, excommunication: for Suertie of the Peace: or by speciall commaundement of any Iustice, to be bailed, by Shirife, keeper of prison, or other

ther Officer or Minister. But willeth and commaundeth that all those that be *Arrested* by force of any Writ, Bill or Warrant, in any action Personall, or because of any enditement of *Trespasse*, to be let out of prison vpon reasonable suerties of sufficient persons hauing sufficiēt within the Counties where they bee to bee lette to Baile or Mainprise, to keepe their dayes in suche places as the saide Writtes, Billes or Warrantes shall require.

Both these last Statutes (as appeareth) were at the firste ment to giue a rule vnto Shirifes and other meaner Officers, in what cases to let their prysoners to Baile, and in what not. But as the Statute of W. 1. is by the expresse letter of 1. & 2. of Ph. & Mar. sette forth as a line whereby the Iustices of Peace are to guide themselues: so it seemeth to mée, that they ought to haue an eie vnto the other Statute also, for asmuch as, certaine other persons bée therein also mencioned not to bée Baileable by lawe, and so within the reach of these verie wordes that lie in the Statute 1. & 2. Phil. & Mar. cap. 13.

Manslaughter baileable, and not Murder.

This Statute of 1. & 2. Ph. & Mar. seemeth (as hath bene saide before this) to distinguish betweene Murder, & Manslaughter.

ter, making this offence Baileable, but not the other: So as it shoulde restraine (as it were) the generall wordes (death of a man) in the Statute of W. 1. to cause them to bee understood of Murder onely. And besides it maketh mention of the Bailement of Accessories whereof the Statute 2 & 3. Ph. & Mar. cap. 18. hath neuer a worde. I will be therefore a little bolde to remember here some fewe cases of these matters, to giue (as my manner hath bene) some glimmering of lighte to the vnacquainted Iustices of Peace with the groundes of our Lawe, how to discerne and know them asunder, the better thereby to graunt or denie the sute for Baile that shall bee made vnto them.

The sundrie construction of the wordes Murder and Manslaughter, and how they be commonly understoode at this daie, hath appeared alreadie.

Nowe if one doe suddenly (without anye occasion of present quarrell offered) drawe his sworde, and therewithall killeth an other, that standeth by him, this cannot bee thought but to haue bene done of a pretensed purpose, and therefore hath bene taken to bee Murder. Dalison in his Reportes.

So

So is it taken if two fall out, and doe appoint a place to fight togither, and there the one of them killeth the other, *ibid.*

If a man assaulteth the Maister vppon malice prepensed to kil him, and he killeth the seruant, against whome he had no malice at all, yet is this Murder, Plowd. Com. Fol. 101.

But if ỹ Maister assaulteth one vpõ such malice, and the seruant (not foreknowing this matter) taketh then his Maisters part, and killeth the partie, it is but Manslaughter in him, though Murder in the Maister, *ibid.* Fol. 100.

If one lieth in awayte to kill one, and an other cõmeth there by, and so by mistaking hym for the partie, whose bloude was thirsted for, he is slaine, this is Murder: for it was grounded vpon malice prepensed, as in the case that hath beene remembred heretofore of the intent in the husband to poyso his wife, whereby in a maner against hys will, his childe was poysoned, *ibid.* Fol. 474.

Brooke Chiefe Iustice was of opinion, 4. & 5. Phil. & Mar. That in all cases, where a man alone, or wyth other, commeth to doe an vnlawfull acte to an other, as to beate him or diseise him of his lande, &c. and killeth hym in that doing, it is Murder: But

if

if a ſtranger be killed there, that then that is but Mãſlaughter. And Dalliſon agréeth with the firſt part of this opinon.

And he further repoꝛteth, that if a maiden ſeruant conſpire with a man to robbe hir maiſtreſſe & ſo they kill hir, this is but Murder in the man, though petit Treaſon in the maiden.

Acceſſoꝛies to all maner of Felonies be baylable by the ſtatute W. 1. in theſe woꝛds, (Thoſe that be charged with the receit of Theeues or Felones, or of commaũdement, or of force or aide thereunto.) And M. Stamforde. F. 71. affirmeth that thoſe alſo which be charged with abbetment, conſent oꝛ procurement, be within the equitie of the ſame woꝛdes. Acceſſories.

This ſtatute theꝛefoꝛe ſéemeth to make thꝛée ſoꝛtes of Acceſſoꝛies, ſome to be befoꝛe the offence committed, as Commaunders, abbetters, conſenters, and procurers: ſome at the déede doing, as thoſe that then giue force oꝛ aide thereunto: and a thirde ſoꝛte of thoſe that receiue the Felones, and comfoꝛt them after the fact done.

But foꝛ as much as the ſecond ſoꝛt of theſe men be at this day accompted as deepe offendoꝛs as the very doer him ſelfe is, theꝛefoꝛe (in myne opinion) in all ſuch caſes where he

is not to be bailed by lawe, these men also ought to remaine in prison still, notwithstanding the words of this statute.

Now to know such an Accessorie (as the law is taken at this day) and him also from a principall, let these cases following suffise.

If one procure or commaunde an other to kill a man, but is not present when the other killeth him, he is taken to be but an Accessorie. But if he be present at the very time, he then is taken to be a principall murderer. 7. H. 4. 27. & 4. H. 7. 18.

And if hunters that haue agréed to kill such as shall resist them, do come into a parke, & one of them runneth vpon a man that rebuketh them, and killeth him, it is Murder in all the hunters that be in the parke, although some of them doe not sée, & all be principals, as Dalison reporteth.

So if diuers come to doe a Murder, & one of them onely striketh and killeth the man, & the other be but present abbetting him and ready to ayde him if néede were, they be all taken to be principall Murderers at this day. For their presence is a terrour vnto the partie slaine, and the greater occasion of his present death. Plowd. Com. Fo. 98.

If a man commaund one to poyson an other, and he killeth him with a sword, yet the Com-

cõmaũder is Accessorie to this Murder. Da.

So if B procureth one to kil A. in the field, and he killeth him in a Church, or to kil him such a day, and he killeth him an other day, B. is Accessorie to the killing: but if after such procurement, and before the execution thereof, B. groweth penitent, & chargeth him not to commit the fact, and he notwithstanding performeth it, now B is not Accessorie at al. Plow. Com. 475.

And if B. commaund one to beate an other, and he vpon that beateth him so as he dieth of it, B. is Accessorie to this Murder. 3. E. 3 Coro. Fitz. 314.

If B. commaundeth A. to robbe a Goldesmith of his plate as he rideth to *Sturbridge* faire, and he breaketh his house by night in *Cheapeside*, and robbeth him of his plate, B. is no Accessorie to this Burglarie. *ibidem.*

So is it if B. cõmaund A. to burne ỹ house of C & he burneth the house of D then B is no Accessorie to ỹ burning. But if he had burned the house of C. & by that fire the house of D. had bene burned also, then were B. Accessorie to that burning of the house of B. because that burning followed of the fire which was kindled by his commaundement. *ibidem.*

To make receiuers cõforters & aiders of Felonies, after the fact cõmitted to be offenders

and Accessories: It is requisite (sayth M. Stamf. F. 41.) that they haue knowledge of the felonie done, and it must be with an euill entent, for if he aide him by his good word and suit for his deliuerance, or writeth in his behalfe for that purpose, he shall not be accompted an Accessorie. 26 Ass. pl. 47.

If a man doe giue a mortall wound to an other vpon the first day of August, and a third person (knowing of the wounde) receiueth him two dayes together, and then he departeth, and after he that was hurt, dyeth vpon the tenth day of August, this Receipt maketh him no Accessorie, for all the time of the Receipt it was no felonie: But otherwise it is, if he had receiued him continually, till the death and after, Dalison.

If a man pursue and take a Felon which hath stolen his goods, and he taketh his goods from him, and then suffereth him to goe at large, this maketh him no Accessorie. But if he agrée with him, and take money of him, to the end that he shall not giue euidence against him, then is he an Accessorie to that Felonie, by the opinion of Iustice Hales (M. 6. E. 6.) because it is a comforting of him.

A wife may be Accessorie to a felonie without hir husband, by receiuing Felons into ỹ house, the husbande not knowing of it, or

wayuing

wayuing the house so sone as he knoweth of it. 15.E.2.Coron.Fitzh.383. But the wife shal not be accompted Accessorie to the felonie of hir husband, by comforting him, &c. neither is she bounde to discouer him. Britton.F. 47.

But now to returne to Baylement. He which (within the yeare) is acquited of murder or manslaughter at the Queenes suite, must be remitted to prison, or let to Mainprise, vntill the ende of the yeare, and the partie grieued may in that meane time commence the Appeale. 3.H.7.ca.1.

Further, mée thinketh that I may set downe this as a rule (euen at the common law) concerning Bailements. That Iustices of the Peace can not meddle with the Bailement of any prisoner, except he be prisoner for such a cause, as whereof the Iustices of the Peace be competent Iudges. Which also was the cause that one Iustice of ỹ Peace by force of the Commission onely, could not well haue bailed suspectes of Felonie, before that they were indited thereof (as I tolde you,) For out of their Sessions, and till inditement, they were no Iudges of the matter.

And on the other side, it séemeth that two Iustices of the Peace (the one of them being

of the *Quorum*) may (out of the Sessions) baile such as come into prison by the proceſſe of the Sessions made vpon penall lawes, not forbidding baile, because they be competent Iudges of al those matters, insomuch as two such Iustices may heare & determine them.

Sundrie doubts (I confesse) may be made concerning the businesse of Baile, which I am not able to dissolue, & therefore am not much willing to moue. Onely this I will say for all, that it becommeth Iustices of the Peace to be very circumspect in graunting Baile, both for feare of wrong by denying it to him that is repleuisable, and for feare of daunger to the seruice it selfe by giuing it where it is not grantable. And therfore I aduise them, to consider first, whether ỳ power of Baile (whē it is required) be not takē from them by some of these former statutes: & then, whether that particular statute it selfe against which ỳ prisoner is charged to offend) doe not specially prohibite the same: for you shall meete with many statutes, which doe not only take baile frō the offenders against them, vpon their solemne conuiction after Iudgement, but also vpon the Record of some one or two Iustices of the Peace, by examinaion, proofe by witnesses, or such other triall had before them.

For exāple, take a fewe of each kind, seeing

it

it would proue troublesom to rehearse thē all.

1. He that is conuicted before the Iustices of the Peace, vpon the statut of Liueries, shall be committed to prison for one whole yeare without Baile or Mainprise. 8.H.6.c.4. Liueries.

2. He that is cōuicted before them, for abusing a licence of transporting victuall, shall likewise be committed by them, and shal remaine there a whole yeare without Baile, or Mainprise.1.& 2.Phil.& Mar.ca.5. Licence to transporte.

3. He ỹ is conuicted before them for offending the statute made against forstalling,&c. shall be committed to the gaole for two moneths without Baile or Mainprise. 5.E.5.c.14. Forstallings.

4. And he that is cōuicted before them for offence against the statute of Musters shal be awarded to remaine in prison without Baile or Mainprise, till he haue paied the forfaiture,4.& 5.Phil.& Mar.ca.3. Musters.

1. Againe if any one Iustice of the Peace shal find or know any to haue exercised any vnlawful games, he may cōmit him without Baile or Mainprise, till he will become bound no more to vse vnlawful games. 33.H.8.ca.9. Gamers.

2. So, he that is conuicted before two Iustices of ỹ Peace to haue refused to serue for such wages as is by order appointed, shal remaine in prison wout Baile or Mainprise, till he wil be bōd to serue accordingly.5.El.ca.4. Seruaunt.

Alehouſe.

3. He that is committed by two Iuſtices of the Peace for keeping a common Alehouſe, of his owne auctoritie, ſhal remaine in priſon three daies, &c. without baile or mainprise. 6. E. 6. ca. 25.

Baſtarde.

4. And the reputed father or mother of a Baſtard childe, that will not perfourme the order ſet downe by two Iuſtices of ỳ Peace thereto auctoriſed, ſhall be committed, and ſhal remaine in priſon without baile or main prise, till he or ſhe will be bound, &c. 18. El. c. 3.

Now (for an ende of Bailement) I will ſhewe you one forme of a Baile, and an other of a Liberate.

The *Baile.*

Memorandum, quòd decimo die menſis Octobris, Anno regni &c. coram nobis G. M. & W. L. *duobus Iuſticiariorum &c. aſſignatorum, venerunt* A. B. & C. D. *de* E. *in dicto comitatu* Yeomen, *& ceperunt in balliũ* F. G. *&c.* Laborer, (*captum, & detentũ in priſona, pro ſuſpicione cuiuſdam felonie, &c*) *vſq; ad proximam generalem Gaole deliberationem in comitatu predicto tenendam: Et aſſumpſerunt ſuper ſe, ſcilicet quilibet eorum ſub pœna, 20. lib. de bonis et catallis, terris et tenementis eorũ et cuiuſlibet eorum ad opus dicte D. Regine leuandarum, ſi predictus* F. G. *ad eandem proximam Gaole deliberationem*

tionem perſonaliter non comparebit coram Iuſticiarijs dicta Domina Regina ad dictam Gaolam deliberandam aſſignatis, ad reſpondendum dicta Domina Regina tunc & ibidem de et ſuper omnibus quæ illi obijcientur. Datum ſub ſigillis noſtris, die et anno ſupradictis.

GEORGE M. and *W. L.* two of the Iuſtices of &c. To the keeper of her Maieſties priſon in *Maydſtone*, &c. greeting. Foraſmuch as *F. G.* &c. Labourer, hath before vs found ſufficient mainepriſe to appeare before the Iuſtices of Gaole deliuerie at the next generall Gaole deliuerie to be holden in the ſaid Countie, there to aunſwere to ſuch things as ſhal be then on the behalfe of our ſaid Soueraigne Ladie obiected againſt him, and namely to the felonious taking of two ſheepe (for the ſuſpition whereof he was taken & cõmitted to your ſaid Gaole) we commaunde you on the behalfe of our ſaid Soueraigne Ladie, that (if the ſaid *F. G.* doe remaine in your ſaid Gaole for the ſaid cauſe, & for none other) then you forbeare to grieue or detaine him any longer, but that you deliuer him thence and ſuffer him to go at large, and that vpon the paine that will fall thereon. Yeouen at *Ightham* aforeſaid, vnder our Seales, this tenth day of October, &c. The Liberate.

The good Abearing.

The authoritie of some two Iustices of the Peace goeth yet further: for the common manner is, that two Iustices of the Peace (the one of them being of the *Quorum*) doe ioyne in graunting suertie for the good abearing: but thereof I haue already spoken my minde.

Alehouses.

Two Iustices of the Peace (the one being of the *Quorum*) may prohibite & remoue common Ale-selling, & may also allow the same, taking bonde with suertie by Recognusance for good rule to be kept in such Alehouse &c. by their discretion. And they may also commit & imprison for three dayes those that keepe common Ale-selling of their own heades, against prohibition, or without allowance thereof, and after take Recognusance of them with two suerties that they shall keepe none. 5.E.6.ca.25.

And heare, seeing that the order of the condicions of these bondes is partely referred to discretion, I will (for the better brideling of these nurseries of naughtinesse) leaue with you that forme of the first of them, which I haue knowen practised by that Honourable Iusticer, the Lorde William Cobham, nowe Lorde Warden of the Fiue Portes.

The Condicion of this Recognusance is suche,

ſuche, That whereas the withinbounden *A.B.* is admitted and allowed by the withinnamed Lorde *Cobham*, and *William Lambard* (two of the Queenes Maieſties Iuſtices of the Peace within the Countie of *Kent* within written) to keepe a common Alehouſe or Tippling houſe, and to vſe common ſelling of Ale or Beere, onely within the nowe houſe of him the ſaid *A. B.* (and not elſewhere) ſcituate in the *High ſtreate* of the Towne of *M.* withinwritten, and called the ſigne of the Hart: If therefore, he the ſayde *A. B.* during ſuche time as he ſhall keepe ſuche common Alehouſe there, ſhall not ſuffer any vnlawfull play, at the Tables, Dice, Cardes, Tennis, Bowles, Cloſh, Coytes, Loggets, or other vnlawfull games to be vſed in his ſayde houſe, or in his garden, orcharde, or other his grounde, or place: Nor dreſſe, or cauſe, or ſuffer, to bee dreſſed, anye fleſhe to bee eaten vpon any daye forbidden by the Lawes or Statutes of this Realme of Englande: Nor wittingly and willingly admit, or receiue, into his ſayd houſe, or any parte thereof, any perſon notoriouſly defamed of or for theft, incontinencie, or drunkenneſſe, or that ſhall be before hande notified to him the ſaid *A.B.* by the Conſtable

For, euerie place is not meeter

or

or Borſholder of *M.* aforeſaid, for the time being, or by the Deputie of either of them, to be an vnmeete perſon to be receiued into a common Alehouſe : Nor keepe or lodge there, any ſtraunge perſon (aboue the ſpace of one day and one night togeather) without notice thereof firſt giuen to the Conſtable or Borſholder, or the Deputie of the one of them, there : And finally, if he the ſaid *A. B.* during all the time that he ſhall keepe common ſelling of Ale or Beere in the ſaid houſe, ſhall and will there vſe and maintaine good order and rule. That then this preſent Recognuſance &c. or elſe, &c.

Weightes & Meaſures.

Two Iuſtices of the Peace (ſo that the one be of the *Quorum*) may (by examination, or Enquirie) heare and determine the faultes of heade Officers in Cities, Boroughs, and market Townes, that doe not twice yearely viewe and examine Weightes, and Meaſures, and breake and burne the defective : as alſo the defaults of Buyers and Sellers by other weightes and meaſures than they ought to doe, and may breake and burne the defective weightes and meaſures, and amerce and fine the offendours by their diſcretion, and make proceſſe againſt them, as if they were indited of Treſpaſſe againſt the Peace, 11. H. 7. ca. 4. & 12. H. 7. ca. 5.

Two

Two suche Iustices, may give licence to Fencers, Beareweards, Common players in Enterludes, Minstrels, Iuglers, Pedlers, Tinkers, and Petiechapmen, to goe abroade so as they shall not be taken as Roges. 14. Elizab. ca. 5. Pedlers, Tinkers, Fencers, Players, &c.

Sute may be commenced against a high Constable in the name of two of the next Iustices of the Peace to the place (if it be out of Citie, Borough and Towne Corporate,) for not suing a negligent Collector of the money for the poore within the time limitted by the Statute: and they shall euerie halfe yeare take the account of such Collector, and may take order with the Surplusage of such collection, and may also commit him to prison for refusing to account, or to bring in his surplusage contrarie to the Statute 14. Elizab. cap. 5. Poore.

Two Iustices of the Peace (the one being of the *Quorum*) may imprison such as doe refuse to give towardes the relieue of the poore, or doe discourage others to give. And the Bishop, or his Chauncelour, shall call the two Iustices of the Peace next inhabiting to any Hospitall, to assist them in taking the account of such as haue had the collection of the reuenues and profites of such Hospitall, and they three may charge the accomptant (vnder penaltie Poore. Hospitall.

naltie to lose such summe of money as they shall thinke meete) to account, & not to delay it, and forthwith to employ the Surplusage to the vse of the Hospitall 14. Elizab. cap. 5.

Barstard childe. Two Iustices of Peace (the one being of the *Quorum*) in, or next to the limits where the parish church is, in which a Bastard child (left to the charge of the Parish) shalbe borne, ought to take order by their discretion, as wel for the releife of the Parish and the keping of the childe, as also for the punishment of the mother and reputed father therof 18. Eli. ca. 3.

Tithes. Two Iustices of Peace (the one being of the *Quorum*) vpon complaint by any competent Iudge of Tithes, for any mildemeanour of ỹ defendant in a sute of Tithes, may cause him to be attached, or committed to warde, till he finde suertie vnto them by Recognusance to the Kings vse, to obey the Processe and Sentence of that Iudge 27. H. 8. ca. 20.

And also vpon complaint in writing by an Ecclesiasticall Iudge that hath giuen definitiue sentence in case of Tithes (against one which wilfully refuseth to pay the Tithes, or summes of money so adiudged) two such Iustices may cause the partie to be attached, and committed to the nert Gaole, till he finde such suertie as is aforesayd to performe that sentence 32. H. 8. ca. 7.

Two

Cloth.

Two Iuſtices of Peace, dwelling nere any Citie or Towne, where any Retaylour of woollen cloth ſhall preſent vnto them any defective cloth againſt this Statute being cõferred with the Statute 4. & 5. Phil. & Mar. ca. 5. ſhall cauſe the ſame to be cut into three equall partes, whereof the one to be to the Queene, the other to the Preſentours, and the third to the Iuſtices them ſelues 5. Ed. 6. cap. 6.

Fiſherman.

No Fiſherman ſhall be taken to ſerue as a Mariner by the Queenes Commiſsion, but by the choice of two Iuſtices of the Peace adioyning to the place where he is to be taken 5. Elizab. ca. 5.

Diuide the fourth parte of a wood.

Two Iuſtices of the Peace (not being of kinred, alliance, counſell, or fée, to the Lord (or owner of a woode) appointed by the more parte of the Iuſtices of Peace at their Seſſions, vpon complaint of the Lorde made vnto them, may diuide & ſet out the fourth parte of it, if the Lord and Commoners therof (being firſt called before them) can not agree vpon it. 35. H. 8. ca. 17: & 13. Eliz. ca. 25.

Amerceméts in the Coũtie Court.

Two Iuſtices of the Peace wherof the one to be of the *Quorum* (appointed by the *Cuſtos Rotulorum* or by the Eldeſt of the *Quorum* in his abſence) are to ouerſée & controle the Shiriſes bookes and amercements, & the eſtreits

of

of the said amercements, are to be made by Indenture betweene them and the Shirife or vndershirife, & to be sealed with their seales: And they may vpon suggestion make proces as in an action of Trespasse against the offendors against the Statute to aunswere before them. 11. H. 7. ca. 15.

And here also, is place for those priuate Actes, wherein any power is giuen to two Iustices of the Peace, as,

Norwich. 5. E. 6. ca. 24. For the making of Couerlets & Dornikes, in *Norwich*.

Wales. 35. H. 8. ca. 11. For wages of the Knights of *Parlemẽt*.

Northumberland. 11. H. 7. ca. 9. For recognusances to be taken of Lessees in *Northumberland*.

Vniuersities. 2. & 3. Phil. & Mar. ca. 15: & 13. Elizab. cap. 21. For prohibition of purueiances, within fiue miles of either of the vniuersities.

Kent, & Sussex. 14. H. 8. ca. 6. & 26. H. 8. ca. 7. For laying out new high waies, in Kent and Sussex.

Cardiffe. 23. Eliz. ca. 11. For the repairing of Cardiffe bridge.

The

VVhat thinges, three, or moe, *Iustices* of the Peace may do out of the *Sessions*.

CAP. XXIIII.

THe Auctoritie as well of any two Iustices of the Peace generally, as of some certayne two Iustices specially, being thus at some length vnfolded, it remaineth that (for an ende) we speake somewhat of thrée, and the greater number.

Vnlawfull Assemblie.

Thrée Iustices of the Peace (one of them being of the *Quorum*) may discharge out of prison, any person committed thither for his offence in not declaring to a Iustice (within 24. houres) that he was moued to ioyne in any vnlawful Assembly contrary to the Statute, 1. Mar. 1. Parl. ca. 12 & 1. Eliz. ca. 17.

Certifie for an Aprētise.

It is requisite that the Certificat (that is to be made to the heade Officer of a Citie or Towne Corporate, where a childe is to be put Apprentice to a Marchaunt, Mercer, Draper, Goldsmith, Ironmonger, Imbroderer,

T.

derer or Clothier, that the father or mother of such childe may dispende fortie shillings freehold by yeare) be vnder the handes and seales of three Iustices of the Peace where ỹ lands lye. 5. Eliz. ca. 4.

Roges.

Three Iustices of the Peace (the one of the being of the *Quorum*) may with the Surplusage of the collections and forfaitures, by their discretions settle the Roges (borne, or abyding for the most parte of three yeares, in that Shire) to worke, there to be holden to worke by ouerseers, 14. Eliz. ca. 5.

Money giuē to the poore, high wayes, or bridges.

The Bishop & his Chauncelour, and three such Iustices of the Peace, haue power to examine, how money or other reliefe (appointed by King Henrie ỹ eight, or any other, to the vse of ỹ Poore, or of amending of Highwayes or Bridges) is bestowed, and to cal to account the deteiners thereof, &c. 14. Eliz. ab. cap. 5.

Depraue the Sacramēt of the Lordes supper.

It seemeth, that three such Iustices of the Peace may out of the Sessions take information and accusation by the oathes of two honest persons, against such as shal deprave the Sacrament of the body and bloud of our Lord and Sauiour Iesus Christ, against the Statute: and examine them, what other witnesses were then by: and to bynd them al by Recognusance, to giue in euidence at the day of triall, 1. E. 6. ca. 1. but enquire of this matter.

Foure

Foure Iustices of the Peace (whereof one to be of the *Quorum*) may (where a decayed Bridge is, & where it can not be proued who, or what lands, be chargeable to the repairing therof) take the inhabitants, make collectors, and appoint ouerseers, for the amendement of the same &c. 22.H.8.ca.5. Foure Iustices. Bridges.

Sixe Iustices of the Peace, may in sundrie shires take order for common Gaoles, wherof the Shirite shal haue the custody, and to the which murderers & felons &c. shal be sent: and may do & performe diuers incidentes thereto by the Statuts. 23.H.8.ca.2: & 13.Eliz.ca.25. Sixe Iustices. Gaole.

Sixe Iustices of the Peace (two of thē being of the *Quorum*) may for a whole yeare after the expiration of any Commission of Sewers, execute the lawes of the Cōmissioners of Sewers, vnlesse that a new Commission of Sewers be published within the yere. 13.El.c.9 Sewers.

To this Title also, do these particuler Statutes belong.

13.El.ca.23: & 23.El.ca.12. For pauing the streete by *Alegate*.

34.H.8.ca. .For establishing *Iustices* of the Peace in Wales &c.

27.H.8.c.5. For *Iustices* of the Peace in *Cheshire*, &c.

23.H.8.ca.2: & 5.Eliz.ca.24: & 13.Eliz.ca.25. For the appointing & building of Gaoles, in sundry shires.

18.El.ca.20. For amending of Bridges within fiue miles of *Oxford*.

18.Eliz.ca.10. For the reparation of the ferry called the Kings ferrie in the Isle of Shepey in *Kent*.

Of the reward, & punishment, of *Iustices* of the Peace, for things done, not done, or misledone, out of the Sessions of the Peace.

CAP. XXV.

OF Reward, and Punishmẽt (as said Soñ) all Common weales doe consist: for as the care of equitie and Iustice wareth cold, vnlesse there be rewarde readie for vertue: So the negligence of euill men must nedes be corrected by seueritie and chastisement of paines. And therefore, albeit the meaning of our Parliamentes hath alwayes bene, that choise shoulde be made of such persons for this Office of the Peace, as neded no rewarde for their trauaile in that behalfe, yet to the ende that they shoulde with the more alacritie and cheerefulnesse proceede in their affaires, they do nowe and then cast them a trifle, rather to let them knowe that they doe

Reward.

doe beholde their well doing, than that they ſtande in neede of any recompence.

Hereupon euerie Iuſtice of Peace, ſitting in execution of the Statute of Labourers & Seruauntes, ſhall haue fiue ſhillings the day (for thrée daies togither) out of the forfeitures that grow by the ſame Statute 5. Eliz ca.4. Seruauntes.

And if any perſons (commaunded by two Iuſtices of Peace to appeare, to be made an ouerſeer to ſée the Statute of Cloth making kept) doe (without reaſonable excuſe) refuſe to come and to take vpon him that office, he is to forfeit for euery ſuch refuſall fortie ſhillings: and thereof thoſe Iuſtices are appointed to haue the one halfe by the Statute, 3. E. 6.ca.2. Ouerſeers of Cloth.

Thoſe two Iuſtices of Peace alſo next adioyning, to whom any Cloth (faultie againſt the Statutes) ſhall be preſented, may cut the ſame into thrée equall pèces, and ſhall haue to them ſelues the one of the ſame, by the Act 5.E.6.ca.6: & 4.E.5: Phil.& Mar.ca.5. Faulty cloth.

And euery Iuſtice of the Peace, is allowed to retaine to his owne vſe, the one moitie of all ſtraungers goods, calling them ſelues Egiptians that he ſhal lawfully ſeiſe, by vertue of the Statute. 22.H.8.ca.10. Egiptians.

The Iuſtice, or Iuſtices of the Peace, that doe ioyne with the Clerke of the Peace, in Inrollement of bargains and ſale.

taking ꝯ Conusance of an Indenture of bargaine & sale of land to be inrolled, shall haue xy.s.therfore, if the land excede not in value xl.ꝑ.by the yeare, and y.ꝑ.by.s.if it do excēd that value, by the Statute 27.H.8.ca.16.

Riot. The Queenes highnesse shall beare the costes that the Iustices of Peace shall sustain in the execution of the Statute of Riots, &c. made 13.H.4.ca.7: by 2.H.5.cap.8.

Forcible entrie. And ꝯ Iustices of the Peace shal make executiō of ꝯ Statute of forcible Entries, at the costs & charges of the party greeued. 8.H.6 ca.9

Alehouse. And twelue pence is giuen to the two Iustices of Peace for euery Recognusaunce taking, of him that is allowed to kéepe a common Alehouse, by the Statute 5.E.6.ca.25.

Punishmēt. On the other side also, the Statutes doe nowe and then correcte the dulnesse of these Iustices with some strokes of the rodde or spurre. And therefore euen at ths first it was ordayned, that if the Wardeins of the Peace did not looke vnto the execution of the Statute vpon such as should ride or go armed in any place, putting the Country in feare, then the Iustices assigned by the king, should enquire of their defaulte, and punishe them, Stat.North.2.E.3.cap.3.

Ride armed.

Riots. And the Statute of Riots &c.(13.H.4.c.7.) layeth C. li. forfeiture vpon those Iustices of

Peace

Peace that shal dwell nigheſt to the Riot, &c. if they doe not put that Statute in execution.

And thoſe Iuſtices of the Peace, and Shirife, or Vnderſhirife, which (in ſending their Certificat to the Queen & hir counſel, concerning ſuch a Riot) do not withall certifie the names of ỹ maintenors & embracors in that behalf, with their miſdemeanors that they knowe, ſhall euerie of them forfeite twentie pounds, vnleſſe they haue reaſonable excuſe for not certifying the ſame. 19.H.7.ca.13. Certificat.

That Iuſtice of the Peace whyche ſeiſeth the goodes of any Egyptians, and doth not incontinently reſtore ſuch part thereof as ſhall be proued before hym, to haue bene craftily, or feloniouſly taken, ſhall forfeite the double thereof, to ſuch prouer. 22.H.8.cap.10. Egyptians.

That Iuſtice of Peace which doth not (vpon requeſt made) giue attendance vpon the Queenes Lieutenante of the Shire, for the ſuppreſſion of anye Rebellion, or vnlawfull aſſemblie, ſhal ſuffer a yeres impriſonment, vnleſſe there be cauſe of reaſonable excuſe. 1. Mar.Parl.1.cap.12: & 1.Elizab.cap.17. Rebellious aſſemblies.

If any Iuſtice of Peace ſhall be proued to be in default, about the execution of the Act of the Poore, by two ſufficient witneſſes before the Iuſtices of Aſsiſe, at their nexte generall Gaole delinerie, he ſhal loſe 10.li. 14.Eli.cap.5. Poores

Gunnes and Crosbowes.

That next Iustice of Peace which faileth in presenting the name of him that presenteth it to him, according to the Statute of shooting in Crosbowes, or Gunnes, shall forfaite xx. shillings. 2.E.6.ca.14. But enquire of the continuance of this, as before in the 21. Chapter.

Agnus Dei.

That Iustice of Peace, whyche doeth not (wythin foureteene dayes, after matter vttered to hym concerning any *Agnus Dei*, &c.) signifie the same to some one of the Queenes priuie Counsell, shall incurre the paines of the Acte. 16.R.2 of *Premunire* 13. Eli.ca.2.

Certifie into the Escheaquer.

That Iustice of the Peace, whyche (hauing taken any examination concerning Plaintes in the Shirifes Courte) doeth not Certifie the same into the Escheaquer within one quarter of a yeare after, shall lose fortie shillings for his default, 11.H.7 ca.15.

Baile and certifie.

Those Iustices of the Peace, which do grant any Baile contrarie to the Law, or do not certifie the Baile & examination of the Felonie, according to these Statutes, shall paye suche Fine, as the Iustices of Gaole deliuerie shall thinke meete 1.& 2.Phil. & Mar.cap.13: & 2.& 3.Phil.& Mar.ca.10.

Phisition.

Euerie Iustice of Peace, ỹ (dwelling wythin 7.miles of *London*) doth not (vpon request) assist the Colledge of Phisitions of *London* in the execution of the Statute.32.H.8.ca.8. shall

hee

bee punished, as one that runneth in contẽpt of the Queene. 1. Mar. ca. 9.

And how that Iustice of the Peace shal be punished, that shal take vpon him the office, not hauing twentie pounds in lands, it hath bene shewed alreadie. ca. 6. Not. xx. pounds in lands.

THE EPILOGVE.

THVS muche (so shortly as I coulde) I thought fit to say, concerning the auctoritie of Iustices of the Peace, without the Sessions: wherin I haue rather sought to admonish them (by a sleight view and rehearsall, of the most parte) what things they haue to handle, than laboured to accomplishe them (with ful skill) how to administer & execute them all. The Epilogue.

Neither doeth that knowledge lye in my power, but in their owne diligence, & muste therefore bee wonne by a continuall studie and painfull meditation of the Statutes at large: towardes their helpe and furtherance wherein, I haue entreated a godly and learned Gentleman (M. Iohn Tyndall, a friende and fellow of mine in *Lincolnes Inne*) to take the paines to cull out all those Statutes by them selues which are now in force, and wherewithall Iustices of the Peace haue to deale: not altogither beheading thẽ of their

preambles: Nor any whit curtailing the of their words: Nor otherwise dismembring them, or scattering their partes in sunder: But laying forth the bodies of them whole and at large, vnder their proper Titles, together with the material parts of al their preambles, and not without any of their prouisoes: Therewithal amending the corruptions of the English translation out of ỳ Latine & French: And finally, adding vnto the (where neede shall be) some notes of helpful direction: which things no mã (that I know) hath hitherto assayed. And this shall shortly (I trust) come to light, either in a seuerall Volume by it selfe, or so marked in M. Rastals Abridgement, that euery man (that will) may easily finde much good by it.

The

THE SECONDE BOOKE, INTREATING of the *Sessions* of the Peace, and of things incident thereynto.

THE PROHEME.

IT may peraduenture seeme, that hauing alreadye stoode long in matters that were of the lesse importance, and such as might be dispatched at home *sine strepitu*, I will be now both long and tedious when I beginne with those of greater weight, and which dos require the solemne Benche.

But, as at the first I thought it méete to helpe most, where most neede was, I meane, where one or two Iustices (prelled with the necessitie of tyme, and destitute of the assistaunce of their learned companions) were to administer their office alone: So now,

nowe, knowing that at the Sessions of the Peace there be commonly many Iustices in number, and amongest them sundrie so well instructed in lawe, as in being too busie with that which belongeth thereto, I shall (as the saying is) but sette a candle in the Sunne shine, and rather bewray want in my selfe, than bring helpe or light vnto them. I purpose to runne ouer this residue more swiftly, except it be in a fewe places, where either the profite, or necessitie, (or both) of the matters them selues shall begge licence and pardon for me.

The description of the *Sessions* of the Peace.

CAP. I.

IF a man that hath receaued hurt in his bodie by a stroke, wherof he bleedeth freshely, will be contented for the present to admitte the helpe of any meane Leche or Surgeon (comming next to hande) for the staunching

thing of his blood, & binding vp of the wound, and yet would more gladly haue vsed the conference of diuers expert Surgeons for doing the same, if the danger of the hurt would haue graunted the time that will be lost in calling them together: So also the common councell of this Realme, finding that the bodie of it may be deepely wounded in some one member, and perceiuing that some euills must be resisted at the verie first, (least otherwise they growe past helpe, and ware incurable) hath many times thought it good to committe to one, or to a fewe Iustices of the Peace (for that they be readie, and at hande) the stopping of the blood (as it were) and first dressing of the wounds, by repressing of force, and other outrages, that doe soudainly arise: and hath yet neuertheless (when as the tyme and matter will permit) politikely established an assemblie, and conference of all the Iustices at certaine tymes in full Court, and open Session.

And as it is true, that if the publique Peace shoulde not be preserued by taking of Suertie, before it be broken, If suche as doe violate the communis tranquilitis shoulde not be committed to prison, when they haue broken it, If seditious talebearers (the sowers of Rebellion) shoulde not

be

bee snapt vppe and restreyned, If finally riotous assemblies should not be dispersed, and forcible invasions withstoode and remoued, the hurte bodie woulde bleede to deathe, and too late and in vaine woulde it bee to summone a Session for remedie. So when the bridle is once cast vpon the heade of the Offender, then, and not before is the matter readie for the Sitter. And great and many are the profittes, that woulde followe of these Sessions, if they were often kept, and duely ordered.

The description of a *Session* of the Peace.

I will for this tyme call *a Session of the Peace* An assemblie, of any two (or moe) Iustices of the Peace (one of them being of the *Quorum*) at a certaine daye (and place within the limittes of their Commission) appointed, to enquire by a Iurie, or otherwise, to take knowledge, and therevpon to proceede to heare and determine, according to their power, of the matters within their Commission, and Statutes referred to their charge.

And this description excludeth all meetings, that are onely for Enquirie, in so much as to enquire, and not to heare and determine, is but a halfe doing, and not worthy

worthye the name of a Sessions of the Peace.

It shutteth out also, such assemblies as doe consist of twoo Iustices of the Peace, meeting onely to enquire, heare, and determine of a Riotte, by vertue of the Statute 13. H. 4. for that may they doe (as also the former) though neyther of them bee of the *Quorum*. So that it is but a particular seruice layde vppon twoo Iustices and the Shirife, by this Statute, and the Record thereof shall not (as I thinke) remayne amongest the Recordes of the Sessions of the Peace, as hath bene sayd already.

And therfore the assemblie that I meane, is a meeting of such Iustices for the execution of their generall auctoritie: And albeit that happily some one matter bee the motiue and chiefe cause of their comming togither, yet if they deale with that and others (within their Commission and charge) let it on Gods name passe for a Session of the Peace according to my meaning.

These Sessions of the Peace then, bee grounded, chiefely vppon the wordes of the thirde *Assignauimus* in the Commission, the which (beeing, *duos vestrum, quorum aliquem, &c.*) doe very necessarily require the

the presence of one of the *Quorum*: for the wordes of the seconde *Assignauimus*, doe giue no power to heare and to determine, but onely to make enquiries. Which three thinges, namely, to Enquire, Heare, and Determine, doe (in effect) comprehende whatsoeuer belongeth to these Sessions: So that euerie thinge, whereof I shall hereafter intreate, will concerne, eyther the Information of the Iustices, by enquirie, and other meete meanes: or the Hearing and tryall of the cause: or the Iudgement and execution (which is the determining) giuen and done vpon it. And therefore, in this pathe (God willing) will I treade, and by it you shall trace me to the ende.

A partition of that which followeth in this booke.

Who

VVho shall appoint the *Sessions* of the Peace: and how: and where.

CAP. 11.



THe Iustices of the Peace, doe (at their *Sessions*) take knowledge of causes with in their Iurisdiction, eyther by the Oath of Inquirours, or by the presentment or declaration of other men: And this Inquirie is firste prepared, by the apparance of the Officers and Countrie, & by the Articles giuen in charge: and then performed, by the presentment (or Inditement) of them that had the charge to make it.

The vsuall manner of calling the Officers and Countie togither for this seruice, is by a Precepte to the Shirife, wherein both the disposition of the Iustices is notified for the holding of a Session, and the seruice and attendaunce of those others is commaunded to bée thereat with them, which they be wel warranted to direcie vnto him, by the laste *Assignamus* of their Commission, and the

Mandauimus that followeth thereupon. The Forme thereof hath bene like this:

Precept, to summon the Sessions.

THomas Randolphe, & Thomas Wotton, *duo Iusticiarierum Do. Reg. ad pacem in Comitatu Kancie conseruandam, necnon ad diuersa, felonias, transgressiones, & alia malefacta in dicto Comitatu perpetrata, audienda & terminanda assignatorum, Vicecomiti eiusdem Comitatus, Salutem: Ex parte dicte Domine Regine tibi precipimus, quod non omittas propter aliquam libertatem in Ballina tua, quin eam ingrediaris, & venire facias coram nobis vel sociis nostris Iusticiarijs pacis &c. (tali die &c.) proximè futuro apud* Maidstone *in Comitatu predicto. 24. liberos & legales homines de quolibet hundredo in Ballina tua, tam infra libertates quàm extra, ad faciendum & exequendum tunc & ibidem ea qua ex parte dicte Domine Regine eis iniungentur: Scire facias etiam omnibus Coronatoribus Comitatus tui, Seneschallis, Constabularijs, Subconstabularijs, & Balliuis, infra Hundreda predicta, quod sint tunc ibi ad faciẽdum & perimplendum ea qua ex parte Dicte Domine Regine eis tunc & ibidem similiter precipientur: Et tu ipse tunc sis ibidem ad faciendum & exercendum ea qua ad officium tuum pertinent, & habeas ibi tunc nomina Iuratorum, Coronatorum, Seneschallorum, Constabularierum, & Balliuorum predictorum, & hoc*

preceptum.

preceptum. Dat. sub sigillis nostris apud Boughton Maleherbe *in comitatu prædicto. 16. die Octobris, Anno regni dictæ Dominæ nostræ Reginæ Elizabethæ dei gratia &c. 23.*

This Precepte may bée made by any two Iustices of the Peace, so that the one of them bée of the *Quorum* for two such may holde a Sessions of the Peace, as it doth plainely appeare by the Commission: and therfore (as Maister Marrowe saieth) it sufficeth not to haue it runne vnder the name of the *Custos Rotulorum* alone, séeing that he hath no more auctoritie in this behalfe, thã one of his fellowes hath: for the words of the said *Mãdamus* in the Commission to the Shiriffe be, *Coram vobis, seu aliquibus vestrum, venire faciat, tot, & tales, &c.* Yea, if two such Iustices make a Precept for a Sessions of the Peace, all their fellow Iustices can not discharge it by their *Supersedeas*, but a *Supersedeas* out of the Chauncerie wil discharge it, sayth Fitzherbert.

And if one Iustice of the Peace alone woulde take vpon him to holde a Sessions of the Peace that was alreadie summoned by suche two Iustices, and wyll make the Stile of the Sessions in the names of hym selfe and the other Iustice, all pre-

sentmentes so taken before him may bée auoided: But if the Sessions bée in truely holden by two such sufficient Iustices only, and the Stile (or Title) thereof bée made in the names of thrée, then al the presentments before them shall stand good. For it will not helpe the partie to saie, that one of the thrée was not there, when it shall appeare that two of them (the one being of the *Quorum*) were present, which will suffise. Marr.

The time. Touching the time of holding the Sessions of the Peace, I wil forbeare to speake, till I shall come to diuide the Sessions.

The place. But the place of holding them is arbitrable, and at the pleasure of the Iustices themselues, so that it bée meete for accesse: And although the Precept doe appointe the Session to bée holden in some one Towne by name, yet may the Iustices kéepe it in any other Towne, and all the presentments shall bée good that shal bée taken where they holde it: But, no amerciament, can bée set vppon any man for his defaulte of appearance there, bicause he had no warning of it, saith Marr.

So if two Iustices make a Precept for a Session to bée holden in owne Towne, and two other Iustices shoulde make an other Precept for an other Session to bée holden

den at an other Towne (or in an other parte of the same Towne) the same daye: then the presentments taken before eyther of them shall bee good. Marr. And then also it seemeth, that he whiche serueth at the one Sessions, as a Juror, or Officer, shall bee excused for his defaulte at the other, bycause they bee bothe the Queenes Courtes, and of equall auctoritie.

And albeit that these Sessions bee cõmonlie and most orderlie, summoned by a Precept in writing, yet it is not altogither of necessitie to haue it so to make a lawfull Session: for if two such Iustices of the Peace doe gette men to serue, and doe holde a Session without any Precepte before directed, all Presentmentes made before them by twelue men shall bee of force in Lawe: But there againe, no man shal lose any thing for his default, bycause none had notice of their sitting. Marr.

VVhat persons ought to appeare at these *Sessions*, & therin of the *Custos Rotulorum*, the *Recordes* of the *Sessions*, and the *Clerke* of the Peace, and how the *Iurors* ought to bee qualified and ordred.

CAP. III.

FOr the better preparation towards this Enquirie, let vs pervse the persons, that are to attende and do seruice at the Sessions.

The Iustices of the Peace bée so necessarie, as without them (though all others should appeare) no Sessions can bée kept: and yet if any of them be absent, their fellow Iustices cãnot amerce thẽ, as the Iustices of Assise may do for their absence at the Gaoledeliuerie. For, *Inter pares nõ est potestas*, and the auctoritie of all the Iustices

The Iustices.

ces of the Peace at the Sessions is equall, so that like power hath he which is not of the *Quorum*, with him that is, excepte it bée in speciall cases set forthe in the Commission and Statutes. And therfore, it was holden (3. H.7. Fitzh. *Tit. Iustice del Peace.* 3) that if one which is not of the *Quorum*, wil bée so bolde as to rebuke one that is of the *Quorum*, he & his companions may not committe him to prison for it.

The Recognusors that stand bound to the képing of the Peace, and to appeare at the Sessions and such like, bée commonly tyed to the Quarter Sessions, wherevnto I am not yet come: And those prisoners that are sente by Iustices of the Peace for felonie or manslaughter, or suspition therof, or bée lette to Baile for Mainprise vpon any such offence, be reserued till the Gaole deliuerie, wherewith I haue not to do: The rest of that kinde, and the Rogues &c. maye bée brought forth at euerie Sessions of the Peace. The Recognusors. The Prisoners.

But two sortes of men there are, that owe theyr Ordinarie attendaunce at these Sessions, that is to say, the Officers (or Ministers) of the Courte, and the Iurors of the Countrie.

Amongst the Officers, the *Custos Rotularum* The *Custos Rotularum*.

lorum hath worthily the firste place, bothe for that hée is alwayes a Iustice of the *Quorum* in the Commission, and amongst them of the *Quorum*, a manne (for the moste parte) especially piked out for wisedome, countenance, and credite: And yet in this behalfe hée beareth the person of an Officer, and ought to attend: for the wordes in the Commission bée to him by name, *Quod ad dies & loca predicta brevia, precepta, processus, & indictamenta predicta coram vobis & dictis socijs vestris venire faciatis.*

Who shall Keepe the *Commission* of the Peace

And as his verie name sheweth, he hath the custodie of the Rolles, (or Recordes) of the Sessions of the Peace: and whether the custodie of the Commission of the Peace it selfe doe perteine to him alone, it hath bene made some question: For M. Marrowe sayth, that seeing the other Iustices maye holde a Session without him, it is méete they shoulde then haue the Commission with them. But Chocke in the Booke (9 E. 4. 2.) holdeth, that a Iustice of the Peace (in making any Iustification by vertue of his Office) needeth not to shewe the Cõmision of the Peace, because (saith he) the keepyng thereof belongeth to the *Custos Rotulorum*: and for the same cause also, the Bailie of a Iustice of the Peace shall not bée driuen to

to shewe the Commission, as it seemeth, 20. H.7.7. And truely, since it is suche a thing, as can remaine but in the handes of one at once, it seemeth moste reasonable, that hee which is put in truste with the reste of the Recordes, should be credited with the custodie of the Commission also.

But vnder the name of the Recordes of the Sessions of the Peace, I do not comprehende all manner of Recordes concerning the Peace, but those onely whyche ought to be at the Sessions of the Peace: as Billes, Plaints, Informations, Inditemēts, Presentments, the Rolles of Processes, Trialles, Iudgements, and Executions, and all other the Actes, of the Sessions of the Peace themselues. And furthermore, the Proclamations for the Rates of Seruants wages, all Recognusaunces of the Peace & good Abearing, Recognusances concerning Felones, and Alehouse keepers, and suche like as ought to be certified or brought to the Sessions of the Peace, must bee numbred amongest the Recordes of the Sessions of the Peace: For of all these there may be vse at the Sessions, and therefore the *Custos Rotulorum*, or some for him, ought to bee readie to shew them. And although it were before time at the libertie of a Iustice of the Peace, The Recordes of the Peace.

to certifie a Recognusaunce of the Peace to the *Custos Rotulorum*, (as you may see 2 H. 7. 1.) Yet now, by the Statute (3. H. 7. cap. 1.) he ought to certifie, send, or bring it to the nexte Sessions of the Peace, that the partie may be called, and to the ende also, that his default (if he make any) may be recorded: and by such record of his default, he is concluded to say, that he appeared there, 13. E. 4.

As for Preceptes for Suertie of the Peace, speciall Records for conuictions of forcible Entries, Riots, & such like, as be made out of the Sessions of ỹ Peace by particular Iustices, & be to remaine with thẽselues, & not appointed to be certified thither, I can not recken them in the number of the Recordes of the Sessions of the Peace: no more than I can well doe the Inrolments of bargains and sales, and such other Recordes lying in the charge of the *Custos Rotulorum*, or Clark of the Peace.

But M. Brooke (Tit. Commission. 11.) addeth, that the Records of the Iustices of the Gaole Deliuerie do remaine amongest the Records of the Peace also: howbeit, I think he meant notit of all the Recordes of the Gaole deliuerie: for, as the Iustices of Gaole deliuerie haue their proper Clearke, whiche ma-

maketh vp, & keepeth the Records of things determined by that Cõmission: so the same Iustices (being withal Iustices of Peace) do leaue wyth the Clarke of ỹ Peace, Inditemẽts, & such causes of the Peace, as be not determined, but hãg in proceſſe, to the end offendors may be more ſpædily Iuſticed.

And it appeareth 13.H.4.10. that Hanford Iuſtice of Gaole deliuerie at his departure called the Clarke of ỹ Peace, & willed him to take ỹ name of a priſoner that had bene ſent thither for Felonie, without any ſufficient proofe, & to cauſe it to be inquired of at the next Seſsions of the Peace.

The Office of the *Cuſtos Rotulorum* was of auntient time giuen by the diſcretion of the Lord Chauncelour, vntill that (aboute the latter end of the raigne of King H ỹ 8.) ſundrie perſons (no leſſe vnworthie to occupie the Office, than grædie to haue the place) did by labour and friendſhip obtaine at that Kings handes, graunts of the ſame by his Letters Patents, for terme of their liues: by meanes whereof, ſo many euilles did ſhortly enſue, both to the hinderaunce of Iuſtice, and to the diſheriſon of the Kings ſubiects, that ỹ laſt Parliament of his raign, *viz.* 37.H.8.cap.1. did ſomwhat reſtrain that courſe; and though it did ordain, that none

The gifte of the Office of the *Cuſtos Rotulorũ*.

ſhould

shoulde thencefoorth bee appointed *Custos Rotulorum* in any Shire (a fewe places of Priuiledge onelie excepted) wythout a Bil signed with the Kings hande, yet it toke further order, that the same Bill assigned, shoulde bee but as a Warrant to the Lorde Chauncelour to assigne in the Commissions of the Peace, the same person to be *Custos Rotulorum*, onely vntill the King should (by an other Bill, signed with his hande) make appointment of another for the same Office. But neyther this ordinaunce had any long life: for, wythin a fewe yeares after, it was thought so preiudiciall to the power of the Lord Chauncelour, and so troublesome a matter to sue to the King for bils so signed, that by the Parliament (3.E.6.ca. 1.) the Lord Chauncelor was wholy restored to his aūtient auctoritie in naming the *Custos Rotulorum* againe (excepte in suche priuiledged places) without expecting any such Bill: and, that the *Custos* appointed by the discreation of the Lorde Chauncelour shoulde enioy the same Office to be occupied by himselfe, or his sufficient Deputie, in as ample maner, as if that Statute (37.H.8. cap. 1.) had neuer bene made.

Clearke of the Peace. The Clearke of the Peace oweth his attendance at these Sessions also: for he readeth

deth the Inditements, & seruеth the Court: he enrolleth the Actes of the Sessions, and drawеth the Processe.

He also must deliuer Letters to such as bée acquited of Felonie, and will begge for their fées 22 H.8.cap.12. He must record the burning of Roags thorow the eares 18.Eliz. ca.3. and muste likewise record the Proclamations of Rates for seruants wages, and inroll the discharge of Apprentices 5. Eliza. ca.4. He is appointed to kéepe the counterpane of the Indenture of Armour 4. & 5. Phil. & Mar.cap.2. He kéepeth the Register Booke of licences giuen to Badgers and Laders of corne, 5.Eliz.cap.12. and of those that are licenced to shoote in Gunnes 2.E. 6.cap. 14.

And he is bounde (vnder the paine of xl. shillings) to certifie into the Kings Bench, transcripts of Inditements, Utlawries, Attainders, and Conuictions, had before the Iustices of the Peace within the time limited by the Statute 34. H.8. cap. 14. All whiche things hée can not doe, if hée bée present: so that he is an Officer to this Courte, and the Clearke of the Iustices, as the Statute 12.R.2.cap. 10. nameth him, and not (as M.Marrow thought) the Clearke of the *Custos Rotulorum* onelie. And you maye

reade

reade (2.H.7.1.) that if a Recognusance of the Peace bee brought in to the *Custos Rotulorũ*, and the partie grieued wil not sue forward, then the Clearke of the Peace, who is the Clarke and Attornie of the King (saith that Booke) shall call vpon it for the Kings auauntage: and I am sure, that the saide Statute (37.H.8.cap.1.) calleth his place an Office also.

The nomination of the Clearke of the Peace

Howbeit the nomination and appointmẽt of him hath long time belonged to the *Custos Rotulorum*, and he is to enioy his Office so long as the *Custos Rotulorum* keepeth his place, and may exercise it by himself, or by a Deputie sufficiently instructed in the Lawe, and admitted by the *Custos Rotulorum*.

And this Office was also (for a time) gyuen by the Kings Letters Patents for terme of life, as that of the *Custos Rotulorum* was, vntill the sayde Statute 37. H.8.cap.1. recontinued the auntient order of giuing it to the *Custos Rotulorum* onelie.

The Coroners.

Furthermore, the Coroners, as the common forme of the Precept sheweth, and the Statute (27.H.8.cap.5.) presumeth, ought to be present at the Sessions: But yet that is not, for to certifie their Inquisitions, for

for that ought (by 1. & 2. Phil. & Mar. cap. 12.) to bée done at the generall Gaole deliuerie: nor yet to receiue any Approuour, for neyther that belongeth to the Iustices of Peace 9. H. 4. 1. but it is onelie (saith M. Marrow) because the Coroners be parties to the Exigents, and be Iudges of the Vtlawries: Howbeit, they are (besides that) Conseruatours of the Peace, and may (in cases) commit men to prison, and therefore ought to be at the Sessions, to obiect against them.

The Shirife also, ought to attende at these Sessions, for the double duetie that he beareth: the one, as Shirife to retourne the Precept, to take the charge of Prisoners, and to serue the Courte otherwise: as hée hath in charge by the *Mandamus* that is mẽtioned in the Commision to haue bene sent vnto him: the other, because he also hath Care of the Peace. The Shirife.

The Bailifes of Franchises, and the Constables of Hundreds, are to serue also, ẏ one as Ministers, & the other as Iurours, & therfore ought to giue their attendaunce. Bailifes and Constables.

And euery of these (excepte it bée the *Custos Rotulorum*, for thereof I doubt) maye without controuersie bée amerced, if they make default e: But the Ordinarie oweth not his attendaunce here at any Sessions of the The Ordinarie.

the Peace, as he doth at the generall Gaole Deliuerie, in the opinion of M. Marrow. Indéede, he is not warned by the commune Precept, and therefore cannot so conueniently take knowledge of the Sessions of the Peace. Howbeit, if he come, I thinke that he ought to serue, when he shall bée called.

Iurours for Inquirie and triall.

But especiallye there oughte to appeare suche Iurours as be returned by the Shirife, and warned by his Baylifes, whether it bée for Enquirie or triall. And in thys behalfe, both the Commiſſion, the commune forme of the Precept, and the Law it ſelfe (11.H.4.cap.9.) willeth, that they shoulde be, *probi & legales homines*: for if any of them be diſcredited in Lawe, as by Attainder in Conſpiracie, Attaint, *decies tantum*, Subornation of Periurie, or ſuch like, they bée not *Probi*, and their preſentment is voide by it, vnleſſe there bée twelue beſides them that are not ſo blemiſhed.

Againe, if they bée outlawed, abiured, condemned in a Premunire, or attainted of treaſon, felonie, or ſuch like, then bée they not *Legales*, and their preſentment is merely voide alſo, as it may be gathered vppon the caſe 11.H. 4.41.

And women, infants vnder foureteens yeres of age, Aliens, and ſuch as bée within

orders

ders of the Ministerie or Cleargie, cannot be empanelled amongst others.

And generally these Iurours ought also, either to be inhabiting wythin the Shire, or else to haue lands there: for the Commission willeth, that they shoulde be suche, *Per quos rei veritas melius sciri poterit*, whiche muste néedes be vnderstode of such as haue cause to knowe the Countrie. And the precept is vsually according to the same forme. But specially (in the Countie Palatine of *Lancaster*) ech of them ought to haue to the yearely value of fiue pound, by the Statute 33.H.6 cap.2.

If any of the Iurours returned, be threescore and tenne yeares of age, or haue anye continuall infirmitie, or be otherwise decrepite, yet that shall not excuse him for not appearing, if the Iustices will require his seruice, but he is driuen to his Action againste the Shirife for retourning of hym, vppon the Statute of W.2.cap.38. Marr.

And if he haue a Charter of Exemption, he ought to shewe it to the Shirife, againste whome (if he will notwithstanding empanell him) he may haue his Action vpon the Case, and hath none other remedie by 18.H. 8.5.*Cur.* which may be truely said, as to the sauing of his issues: but by some other bokes

and namely 42. Ass. Pl. 5. & Marr. he is to be discharged vpon his apparance, & specially where he hath in his Charter of Exemptiō these wordes, *Licet tangat nos*, vnlesse there want others that be sufficient to serue.

Nowe, though some of the Enquest of Enquiry be of affinitie (or consanguinitie) with any party grieued, that procureth any inditement, yet that hindreth not their presentment: howbeit it is no discreation for the Iustices to suffer any suche to bee empanelled amongest them.

Generall and particular Iuries.

The common manner in *Kent* (agréeing with the forme of the Precept) is to return particular Iuries for the Hundreds, and one generall Iurie for the body of the Shire: this laste is made vppe wyth vs, (for the moste parte) of the Constables onelie: and those others (if they be not filled at the first) are wonte to bée renued wyth the lyke, from Sessions to Sessions. But that vsage is no small hinderaunce to the seruice (as many doe thinke) by reason that (those particular Iuries beeing seldome serued with full apparance) the whole Enquirie standeth onelie vppon their labour that are empanelled for the bodie of the Shire, that is to say, vppon one man of each Hundred, (at the moste) who cannot be thought to sit

so

so much as a whole Iurie maye and dothe. And therefore, they think, that it were good to make vppe some of the particular Iuries also, (when they be not full) *de circumstantibus*, out of other Hundreds, by which mean, eyther the whole Shire, or (at the leaste) a great many parts therof, might be perused.

To this opinion M. Marr. seemeth to encline, saying, that in default of those which are returned, the Iustices may take a Iurie *de circumstantibus*: And herevnto also the Statute (3. H. 8. ca. 12.) sheweth some further consent, in that it giueth power to the Iustices, by their discretion to commaund the Shirife, or his Deputis, to adde, alter, or diminish, the names of the pannell, which, if he refuse to do it, he shal forfeit xx. l. for the same contempt. Neither is it to be obiected, that men being all of one Shire, maye not take knowledge of things done in diuers Hundreds: Seeing they haue diuers occasions of meeting togither, as at the Countie Courts, the Shirifs turnes, the Assises, & generall Quarter Sessions. And if a Iurie of one Hundred would make presentmẽt of an offence done within any parte of the Shire, out of theyr own Hundred, this were good in Law. Besides which, if M. Marr. mixture be followed, fewe of them that doe appeare,

shall lose their labour, whereas nowe the moste of them doe come in vaine.

How they of the *Iurie* muste be sworne and ordered.

But these men bee not truely Iurours til they bee sworne, as their name pretendeth, and otherwise their presentment is vtterly voide.

And yet if it should by any ouersight happen, that they or some one of them were not sworn at all, if the Record make mention that they be sworne, their presentment is of force ynough, for the Record may not bee gainsayed.

The number of Iurours.

Each Iurie of Enquirie ought to containe 12. in number at the leaste, and if there bee 18. or moe, it shall not bee amisse: Yea the common order wyth vs is, to haue them of an odde number, as 17. 19. or 21. to the end (as it seemeth) that if they shoulde dissent in opinion somewhat equallye, yet there shoulde bee alwayes one to weigh downe the side, and caste the ballance. But if 12. of them, doe agree, the gaine-saying of the residue can not hinder the presentment.

The Iustices ought not to commit these Iurours to anye keeper: nor to keepe them wythout meate or drincke: nor to carrye them out of the Town. And yet they maye adiourne them to an other place, to gyue their

their Verdite, and that may bée then taken by any two Iustices, though neyther of the be of the *Quorum*, saith Marr.

If these Iurours doe wilfully conceale offences (presentable) & ỳ be complayned of by Bill, then may the Iustices chose an Enquest of persons, (whereof euerie one may dispend fortie shillings by yere) to enquire of their concealement: and if anye suche concealement bée founde within the yeare, euerie one of the first Enquest shall bée amerced in full Sessions, by the discretion of the same Iustices: 3.H.7.ca.1. Concealement.

And because the Iurours of those dayes were yet wilfull in their concealementes, it was prouided wythin eight yeares after, that the Iustices of Peace should determine causes vpon information without any such presentment. But, *In vitium, ducit culpæ fuga, si caret arte*, and therefore that ordinãce endured not long, as you shall hereafter perceiue.

Finally, these Iurours ought not to discouer their owne doings: for it is a parte of their oath, that they shal kéepe the Queenes Counsel, and their fellowes. And we reade in Fitzh. (Tit. Coron. 207. & 272.) that to indite a man of Felonie, and then to shew abroade to others, what they haue done

therein, hath bene taken for Felonie: Howbeit that offence is nowe taken to be fineable onelie.

Of the *Articles* that are to bee giuen in charge at the *Sessions* of the Peace.

Cap. iiii.

IT was the auntient maner, that twice in the yeare at the Shirifes Turne (whyche was sometime a Court of greate authoritie, and called the Shiremoote) the Bishop of the Dioceſſe, and the Alderman (or Earle) of the Shire, shoulde be present: the one to informe the people in the lawes of God, and the other to instructe them in the lawes of the lande, Archaionom *in legibus Canuti, Cap.* 17.

And it were to be wished, that as there is commonly at euerie Aſsiſes, a Sermon (vttered by some learned man) so also the like might

might be at each generall (or Quarter) Sessions of the Peace. For, seeing that the lawes of men must be obeyed for God, it doth of necessitie ensue, that he which will seeke to haue man obeyed rightly, must first cause God to be preached truely.

The Iustices of the Peace (saith M. Fitz) for their partes be bounde to enforme the people: And (no doubt) the charge is giuen, aswel to instruct those that be ignorãt, least they offende vnwares, as to enquire of those that haue alreadie fallen into daunger by offence: and thereof it is, that many Statutes do expressly commaund, that they shall be openly read (or declared) at the Sessions, as you shall see in place for it.

But the manner of giuing the Charge, and receiuing the Verdite at this day, differeth from that whyche the Iustices in Eire were wont to vse: for you maye see, in M. Bracton (Fol. 116) that first one of the Iustices did open before the whole assemblie, the benefites of the seruice in hande, the commodities of keeping the Peace: and the euilles of the contrarie: and that then the Articles of the charge were read by one and one to the Iurours, who receiuing the same at the handes of the Iustices) did also make aunsweare in the yelding

The auntient order, of giuing the charge in *Eire*.

vp of their Verdite, to each Article seuerally, and by it selfe.

Which custome, as it had many profits: so is it worthie (in mine opinion) to be recontinued, and brought in vse againe: neyther ought the multitude of the Articles (nowe inquirable) to discourage any man in this behalfe: For, if those Lawes which be leaste seruiceable (either for the present time, or for the place, or other iust respect) were onelie touched or runne ouer, by way of shorte Article: then would there bée the more time afforded, for spéeche that might bée well spente, as well in discourse of exhortation, or dehortation, as in the larger handling of suche other Statutes, whereof there is greater vse and necessitie. And this libertie, the Iustices in *Eire* themselues did vse also, as the same M. Bracton in the same place reporteth.

The pointes of the charge diuided.

The points of the charge that wée haue in hande, may bée reduced to a fewe heads, and that after sundrie sorts of distribution: of which (for examples sake) I will shewe you some: first thus,

Al ỳ matters inquirable, bée either Ecclesiasticall or Temporall: and these Temporall, be either high treason, petite treasons, felonies, or otherwise punishable and finable offen-

offences: Or thus,

All these pointes, doe either cõcerne God, the Prince, or Subiect: Or thus,

All these Articles bee offensiue, either against the first, or the seconde Table of the ten Commaundements of God: Or thus,

All these matters bee inquireable, eyther by vertue of the Commission of the Peace, and of the Statutes therein conteyned, or else by power of the Statutes not comprehended within the Commission: Or thus,

All these Lawes doe prohibite thinges contrarie to some of the foure Cardinall (or principall) vertues, Prudence, Iustice, Fortitude, or Temperance.

They may also be diuided, by the varietie of the punishments, and by some other Accidentall respects: all whiche I leaue to the choice of suche as shall giue them in charge, and will now for this time set downe the Articles themselues, after the order of the first diuision, pointing out in the first place the Ecclesiasticall causes, and then pursuing the Temporall.

In whiche doing, first, I will omitte all such Statutes, as doe concerne, but onely some one, or a fewe particular places: knowing that I write to the most part, who haue not to doe with them. The manner of this Charge,

Secondly I will purposely pretermit the rehearsall of the punishments, conteyned in the Statutes that I am to run thorow: aswell bicause those doe rather perteine to the Iustices, than to the Iurours, as also for that I haue an auncient Precedent of the Iustices in Eire to make for me, who (in their charge) did only deliuer the Articles in offence, without any mention of the paines due vnto the same, As it appeareth in the small volume of the old Statutes, vnder the Title, *Capitula Itineris*.

And thirdly, I will neither recite all the other partes of eche generall Statute by it selfe, nor yet comprehend them wholie and fullie with others: bicause the firste of these waies would be very long, through the ofte iteration of the same things: and the other would bee so croked & comberous (through the varietie and difficultie of the exceptiõs) that the hearer would bee many times losse before I should come to the ende.

I know that M. Fitzh. was of the opinion, that the Iustices of Peace, ought at their Quarter Sessions, and may at their priuate Sessions, giue in charge to the Enquest, all such matters as they haue power to determine: and this he vrgeth, aswel by the Oath of the Iustices (who are sworne to do right in all

all causes within their Commission, or the Statutes) as by the ignorãce of the Iurours, who cannot bée instructed but by the charge: which if it bée so, I sée not (for my part) how either these Iustices (that are bound to vtter all) can bée discharged, or the Iurours (that ought to heare all) can be enfourmed, without this, or some such compendious & plaine waie, that may bothe shortly for the time, & lightsomely for the order, comprehende the substaunce of that which belongeth to their Enquirie.

Howbeit, as I thinke it the best for the Iustices to rehearse all such pointes, wherof the Iurie may make presentment before them: so yet, I holde them discharged (in my slender opinion) if they vnfold onely the articles of their Commission, and of such other Statutes as doe expresslie auctorize them to make enquirie.

For as there bée sundrie Lawes that doe giue to Iustices of the Peace a certaine speciall (or particular) power in them, and doe not yet yéelde vnto them any auctoritie to enquire vpon the same, of which sorte be the Statutes 27.H.8.c.20: & 32.H.8.c.7. of Tythes: The Statute 35.H.8.ca.17. of Woodes: The Statute 23.El.ca.9. of Logwood, and sundrie others: So also there be diuers others, that doe

do afoꝛde to the Iuſtices of Peace the poſwer of hearing and determining and yet doe not expꝛeſſie giue them the name of Inquirie.

And, foꝛaſmuch as they may heare and determine of theſe, by Infoꝛmation (giuen to themſelues & by them commaunded to the Jurie) it ſeemeth to me, that they bee not ſo neceſſarily boũd to giue them in charge, but that they be well inough diſcharged if they lie open, and be readie to receiue the infoꝛmations and pꝛeſentments that ſhall bee offered vpon them: And of this kinde bee the Statutes of Highwaies (5. El. c. 13: & 18. El. ca. 9. (the Statute of Fighting in Churche, oꝛ Churchyarde (5. E. 6. ca. 4.) the Statute of Informours (18. El. ca. 5.) and ſundꝛie others, whereof it ſhall be ſuperfluous to make rehearſall.

Neuertheleſſe, bicauſe I wil not, that my fantaſie ſhall either ſtand againſt his iudgement, oꝛ be pꝛeiudiciall to other mens pꝛofite, I haue contended (what I may) to deliuer the pꝛincipall & moſt ſeruiceable partes, not onely of the Commiſsion and of ſuche Lawes as doe ſpecially conteyne their Inquirie within them, but alſo of al ſuch other Statutes as may be hearde and determined by Iuſtices of the Peace at any their Seſsions, and that in ſo narꝛowe a rowme, as (if I

be

be not, after some proofe, deceiued) they may be distinctly read ouer in a couple of houres, or litle more, so that the yeares of the Kings and the other Notes, be left vnread and passed ouer.

Ecclesiastical causes.

IF anye person haue (within this halfe yere) by writing, printing, teaching, preaching, expresse deede, or act, aduisedly, maliciously, and directly affirmed, holden, sette forth, or defended, the auctoritie, prehemi-nence, power, or iurisdiction spirituall or Ecclesiasticall, of anye forreine Prince or persō whatsoeuer heretofore claymed, vsed, or vsurped in this Realm, or any ỹ Quéenes dominions, or haue aduisedlye, malitiously, and directlye, put in vse, or executed anye thing for the extolling, setting forth, or defence of anye suche pretended or vsurped iurisdiction, prehemineuce, or auctoritie, or any part thereof. Or if anye person (cōpellable to take the oath of Recognition of the Quéenes Maiestie to bée supreame Gouernour in all causes within hir dominions) haue refused to take the saide oathe, after lawfull tender thereof to him made 1. Eli. c. 1. 5. Eli. c. 1. enquirable by woords of 23. El. ca. 1.

Treason the third offēce. Extol any forraine power.

Refuse the oathe.

If

Ecclesiasti-call causes.

Premunire Pope.

IF any person, vnder the Quéenes obedience haue at anye time (wythin this yere) by Writing, Ciphering, Printing, Preaching, or Acte, aduisedlye holden, or stode with, to extoll, or defende the power of the Bishoppe of *Rome*, or of his Sée heretofore claymed, or vsurped within this realme: or by any speech, open déede, or acte, aduisedlye attributed anye suche manner of auctoritye to the saide Sée of *Rome*, or to the Bishoppe thereof, within any the Quéenes dominiõs, yée shall presente him, his Abettours, procurers, counsellours, aiders, and comforters. 5. Eliz. ca. 1.

Treason Withdraw any from obediẽce.

IF anye person haue by anye meanes practised to absolue, perswade, or withdrawe, anye other within the Quéenes dominions from their naturall obedience, or (for that intente) from the religion now established here, to the Romishe religion, or to moue them to promise obedience to the Sée of *Rome*, or other estate: Or if anye person haue bene willingly so absolued, or wdrawn, or haue promised such obedience.

Misprision of treason.

And if anye person haue willingly ayded or maintayned anye suche offender, or knowing such offence haue concealed it, and not within twentie dayes disclosed it to some Iustice of Peace, or other higher Officer. 23. Eliz.

Eccleſiaſtical cauſes.

Eliz. ca. 1.

If anye perſon haue ſaide or ſong Maſſe, or haue willinglye heard Maſſe. 23. Elizab. cap. 1. *Maſſe.*

If any perſon haue vſed, or put in vre, anye Bull, Writing, or Inſtrument of abſolution or reconciliation, or of other ſorte, gotten from the Biſhoppe of *Rome*, or See of *Rome*, or from any perſon clayming auctoritie from the ſame: Or haue by colour of any ſuche taken vpon him to abſolue, or reconcile any perſon: or haue publiſhed any ſuche Bull or inſtrument. Or if any perſon haue aided, comforted, or maintained any ſuch offendor, to the entente to vpholde ſuche offence. Bull, *Agnus Dei, &c.* *Treaſon.*

If anye perſon (to whome ſuche Bull or Inſtrument hath bene offered or perſuaded) haue not within fyre Weekes nexte after ſignifyed the ſame to ſome of the Queenes priuie Counſell, or to the Lorde Preſidente of the *Northe*, or of *Wales*. Miſpriſion of Treaſon.

If anye perſon haue brought hither from the Biſhoppe, or See of *Rome*, or from anye perſon auctorized, or clayming to be auctorized by anye of them, any *Agnus Dei*, croſſes, pictures, beades, graines, or ſuch like ſuperſtitious things, and haue the ſame delyuered, or cauſed, or offered to bee deliuered, *Premunire.*

to

to any the Queenes subiects to vse or weare in any wise: and if anye person haue to such intent receiued or taken the same, and haue not apprehended the offerer thereof, nor within three dayes after disclosed him to the Ordinarie, or to some Justice of the Peace, nor within one daye deliuered the thing to some Iustice of the Peace. 13. Eli. ca. 2: 23. Eliz. cap 1.

Felonie Coniuratiõ.

If any person haue vsed Inuocation, or Coniuration of euill spirites for any cause: or haue vsed Witchcraft, Inchauntmente, Charming, or Sorcerie, whereby anye person is killed or destroyed: 5. Elizabeth. ca. 16.

Propheeying.

If anye person haue within these sixe monethes aduisedlye aduaunced, published and set forth, by writing, printing, open speach, or deed, to any other person, any fantasticall, or false prophesie, vppon armes, fieldes, beasts, or badges, or vpon any time, name, bloudshed, or warre, to the intent to make thereby rebellion, dissention, losse of life, or other disturbance within the Quenes dominions. 5. E. ca. 15.

Felonie Set foorth how long the Queene shal liue.

If any person haue, by setting of figure, casting of Natiuitie, or by Calculation, Prophecie, Witchcrafte, Coniuration, or other vnlawful meanes whatsoeuer, sought to know, & haue set forth by expresse words, deede,

déede, or writing, how long hir Maiestie shall liue, or who shall reigne after hir decease: Or els haue aduisedly, and with a malitious intent against hir Maiestie, vttered any direct prophecie to such purpose: And if any person haue indéede procured, or abetted any suche offenders. 23. El. ca. 2. Ecclesiasticall causes.

If any person haue vnlawfully procured any other person to commit wilfull and corrupt periurie in any cause depending in sute in any of the Quænes Courtes of Record, or in any Léete, Court Baron, Hundred, or Court of auncient demesne: or haue corruptly suborned any witnesse sworne to testifie in *perpetuam rei memoriam*: Or if any haue vpon such procurement, or by his owne acte wilfully committed such Periurie. 5. El. ca. 9: & 14. El. ca. 11. Periurie.

If any person haue within these three monethes, by contemptuous, or reuiling words, or haue aduisedly in any other wise, depraued, despised, or reuiled the blessed Sacrament of the bodie and blood of Christ. 1. E. 6. ca. 1: & 1. El. ca. 1. Sacrament.

If any Parson, Vicar, or Minister, haue since the last Assises refused to vse the cõmon prayers, or to minister the Sacraments according to the booke of common prayers, or wilfully standing in the same, haue vsed any o- Seruice and Sacraments.

ther some in open prayers, or in administration of the Sacraments, or haue spoken any thing in derogation of the sayde booke, or any part thereof. Or if any person haue since that tyme in any plaie, song, or ryme, or by any open worde, spoken in derogation of the saide Booke, or of any thing therein contained: Or haue caused, or maintained any Parson, Vicar, or Minister, to say any Common prayer, or to minister any Sacrament in other manner than after the sayde booke: Or haue interrupted any Parson, Vicar, or Minister, to say open Prayer, or to administer any Sacrament, according to the saide Booke. 1. Elizab. cap. 2. & 23. Elizab. cap. 1.

Repaire to Church.

If any person (being aboue the age of xvj. yeares, and not hauing lawfull and reasonable excuse to bee absent) haue not repaired and resorted to his or hir parishe Churche, or Chappell accustomed or (vppon let thereof) to some vsuall place where Common prayer shall be vsed, vpon euerie Sonday, and other holyday, and haue not there orderly and soberly abiden, during the time of such Common praier, preaching, or other seruice of God: and how long such person hath not so repaired and resorted. 1. Eliz. ca. 2: & 23. Eliz. ca. 1.

If

If any person haue kept or maintained any Schoolemaister, which resorteth not to the Church or is not allowed by the Bishop, or Ordinarie of the Diocese. 23. Elizab. ca. 1. Ecclesiasticall causes. Schoolemaister.

If any person haue malitiously striken any other with any weapon in any Church, or Churchyard, or drawen any weapon there to that intent. 5. E. 6. ca. 4. Fighting in Church or Churchyard.

If any person haue kept Faire, or Market in the Churchyard. Stat. Winton. 13. E. 1. Faire, or Market, in Church yard.

If any person haue feloniously taken goods out of any Church, or Chappell. *Felonie.* Robbe church or Chappell.

Lay causes.

If any person haue counterfaited the Queenes money, or haue brought false money into the Realme, counterfait like the money of *England*, knowing the same to be false, to make marchandize or paiment therewithall. 3. H. 5. ca. 7: & 25. E. 3. ca. 2. *Treason.* Money.

Felonies, in lay causes.

If any Seruant haue killed his or hir Master, or Mistresse: or any Wife hir Husband: or any Ecclesiasticall person his Prelate. 25. E. 3. ca. 2. *Petite Treason.* Seruãt, & Ma. Husband and Wife. Clerke and Prelate.

Lay causes.

Murder. If any person haue of prepensed malice, killed or murdered an other openly, or priuily, whether he that was killed were an Englishman, or a Straunger, liuing vnder the protection of the Quéene.

Poysoning murder. If any haue wilfully killed any other by poysoning, and who bée his aiders, abetters, procurers, and counsellours. 1. E. 6. ca. 12.

Manslaughter. If any person haue by chaunce medley feloniously killed an other.

Cut out tongue, or put out eies. If any person haue of malice prepensed, cut out the tongue, or put out the eyes of any of the Quéenes Subiects. 5 H. 4 ca. 5.

Gaoler handeling streightly his prisoner. If any Gaoler, kéeper, or vnderkéeper of a prison, haue by duresse and paine compelled any his prisoner, to become an appeacher of others against his will. 14. E. 3. ca. 10.

Buggerie. If any person haue committed the detestable vice of Buggerie, with man, or beast. 25. H. 8. ca. 6: & 5. El. ca. 17.

Rape. If any man haue rauished a maide, widow, or wife, aboue ten yeares of age, against hir will, although she consented afterward. W. 2. ca. 34.

Childe. If any man haue carnally knowen and abused any woman childe vnder ten yeares of age, though she consented before. 18. El. ca. 7.

Take woman. If any person haue taken a maiden, widowe, or wife, hauing landes or goodes, or being

ing heire apparant to any, against hir will vnlawfully, (other than his warde, or bondwoman) and of his procurers, abetters and receiuers knowing thereof. 3. H. 7. ca. 2. Lay causes.

If any person haue robbed an other, going or riding by ye way, or otherwise, how much, or how little soeuer it bee that he taketh from him: or haue priuily and fraudulently piked or cut the purse of an other being vpon him. 8. El. ca. 4 Or haue robbed any house by day, or by night, any person being in the same, & thereby put in feare: Or hath robbed any person in any part of his dwelling, the owner, wife, children, or seruants, being therein, or within any other place within the precinct thereof, and then being waking, or sléeping: Or hath robbed any person being in a tent or bothe in a Faire or Market, the owner, his wife, children, or any seruant being then within the same sléeping, or waking. 5. E. 6 ca. 9. Robberie. Cutpurse. Robbe house. Boothe, or Tent.

If any person, or persons, haue feloniously taken the goods of any other, and whether the same be aboue xij. d. in value, or vnder. Larcinie, and *petite* Larcinie.

If any Purueiour for the Quéenes Maiesties house, or his vndertaker, Deputie, or seruant, haue made any puruciance without warrant, and haue carried any thing away against the consent of the owner, being aboue Purueyours,

Lay causes.

xij.d. in value. 28.E.1.ca.2:18.E.2.ca.*vltim.*5.E. 3: ca. 4: 2.& 3.Phil.& Mar.ca.6.

If any Purueyour of the Quéene, or his Vndertaker, Deputie, or Seruant haue taken any carriage in any other maner than is conteined in his Commission. 36.E.3.2. Or haue made purueyance without the testimonie and appraisement of the Constables, and foure honest men of the towne, and without deliuering tales or Indentures vnder his Seale, testifying his purueyances, the goodes being aboue xij.d. in value. 5.E.3.ca.2: 25.E. 3.ca.1. Or hath taken any shéepe with their woolles, betwene Easter and Midsomer at small prices, and carried them to his owne house, and shorne them. 25.E.3.ca.15.

Quære, if the felonie of purueyours (made 36.E.3. ca.6.) be not altered by 23.H.6.ca.14.

Hawke embeselled.

If any person haue founde a Falcon, Tercelet, Lanor, Laneret, or other Falcon that was lost, and hath not forthwith brought it to the Shirife, that he might proclaime it, but did steale and carry away the same. 34.E. 3.ca.22: 37.E.3.ca.19.

Seruant embeselling goods deliuered.

If any Seruant (béeing xviij. yeares of age, and not béeing an Apprentice) hath gone away with, or hath conuerted to his owne vse, any money, Iewells, goods, or cattails

tails of his maisters or mistresses, and of his or hir deliuerie, of ỹ value of forty shillings, to the intent to steale the same. 21. H. 8. ca. 7 : 5. El. ca. 10. Lay causes.

If any person haue by night broken anye House, Tower, Walles, or Gates, and hath entred in with an intent to do any robberie, murder, or other felonious acte there : Or if any person haue burned any dwelling house: or haue by night burned any barne neare to a dwelling house. Burglarie. Burne house or barne.

If any person, emprisoned for felonie, haue broken prison : 1. E. 2. Or if any other person haue broken the prison for such a prisoner, by which hee escapeth : Or if any Gaoler haue willingly suffered such a prisoner to escape : and if any person being arrested for felonie haue bene rescued, and by whome. Breake prison.

If any person haue deuised vnlawfully & malitiously to set at libertie any prisoner endited of treason (concerning the Queenes person) and haue expressly vttered the same deuise. 14. El. ca. 2. Enlarge a Prisoner.

If any person haue deuised malitiously to take or keepe from the Queene any of hir Castles, Townes, Fortresses, or Holds, or to raze, burne, or destroy any of them malitiously and trayterously (the same hauing munition or Souldiours therein of hirs) Take, keepe, or destroy Castles, &c.

Lay causes. and haue vttered the same deuice. 14.El.ca.1.

Hunting by night. If any person haue vnlawfully hunted in the night in any Forest, Parke, or Warrein, or with painted faces, visours, or other disguisings to the intent to be vnknowen, and haue vpon examination by one of ỹ Quéenes counsell, or by a Justice of Peace of the same Shire, willfully concealed such hunters or hunting, or haue disobeied any arrest for such hunting, or made rescue to any person warranted to arrest such hunter, so that the warrant was not executed. 1.H.7.ca.7.

Multiplying If any person haue practised the arte of multiplication of gold or siluer. 5.H.4.ca.4.

Conuey sheepe. If any haue the second time brought, sent, or receaued into any shippe or bottome, any rams, sheepe or lambes being aliue, to be cõueyed out of the Quéenes dominions, or haue procured the same. 8.El.ca.3.

Conuey horses into Scotland. If any person haue solde, exchaunged, or deliuered, within *Scotland*, or the batable grounde, to the vse of any Scot (without the Quéenes licence, vnder hir great Seale) or solde, exchaunged, or deliuered to any Scot within *England*, *Wales*, *Barwicke* the Marches or batable grounde, to the intent to bee conueyed into *Scotland* (without such licence) any horse, gelding, or mare: And if any haue so bought any of ỹ same. 23.H.8.ca.16.1.El.c.7.

If

Lay causes.

Slaunderous newes.

If any person haue aduisedly and with a malitious intent against the Quéenes Maiestie, deuised, written, printed, or set forth any booke or writing, containing any false, seditious, and slaunderous matter, to the defamation of her Maiestie, or to the incouraging or mouing any insurrection or rebellion within her Realme or Dominions: or haue aduisedly or with a malitious intent against her Maiestie procured any such booke or writing to be written, printed, or set forth: Or haue malitiously, by any wordes, writing, or printing, wished, or desired her Maiesties death, or depriuation, or any thing directly to that effect: and if any haue ayded, procured, or abbetted any suche offendour. 23 Elizab. cap. 2.

Rebellious assemblie.

If any persons (of, or aboue, the number of twelue) haue bene assembled, and haue intended, gone about and practised with force of armes vnlawfully to chaunge any Lawes of this Realme, or to cut or cast downe any inclosure of Parke, or inclosed ground, or the bankes of any fishpond, or any conduit head or pipe, to the intent they shoulde lye open, or voide, or to haue any Common or way there: Or to destroy the Déere or Conies in any Parke or Warrein, or Douehouses, or Fish in Pole, or pond, or to cut down any houses,

Lay causes. Barnes, Milles, or Bayes, or to burne any stacke of corne or graine, or other vsuall sustenance of men: and (being commaunded by the Shirife, or any Justice of Peace of the Shire, or by the Maior, Shirife, Justice of Peace, or Balifes of the Citie, Borough, or Corporate towne where the assembly was, by proclamation in the Queenes name to depart to their houses) haue notwithstanding continued togither one houre after, or haue after that forciblie attempted to do any such thing.

And if any person haue vnlawfully, by ringing of Bel, sounding of Trumpet, Drumme, Horne, or other instrument, or by firing of Beacon, or by malitious speach, or Mutcrie, or by setting vp or casting any writing, or by any other acte, raised, or caused to be raised twelue persons, or aboue, in suche manner, and to any suche intent as is aforesayd, and they (being commaunded by proclamation, as before) haue neuertheless continued togeather one houre after, or haue afterwarde attempted forciblie to doe any of the sayde things: And if any the wife, or seruaunt of any the sayd assembled persons, or if any other person, haue willingly and without compulsion, deliuered, or conueyed money, harnesse, weapon, or victuall to any of the

the sayd persons assembled, during their a- Lay causes.
boade togeather as before. And if any per-
son haue hindred or hurte any that did pro-
claime, or went to proclaime as before:
and if any the parties so assembled (know-
ing of that hindrance, or procuring it, haue
neuertheleſſe afterwarde committed or put
in vre anye the things aforesayde: And if
any persons to the number of fortie or moe)
haue so assembled, to the intent to doe a-
nye the sayde things, or anye other Felo-
nious or Rebellious acte, and haue contin-
ued togeather three houres after such Pro-
clamation made, at or nigh the place of as-
semblye, or in some market Towne nert
adioyning, and notice to them thereof gi-
uen. 1. Mar. Parl. 1. cap. 12: & 1. Elizab.
cap. 17.

If anye Souldiour entred a Souldiour Souldiour,
of Recorde, and hauing taken parte of the Mariner. or
Quéenes wages, or any Mariner, or Gun- Gunner,
ner hauing taken preſt wages to serue the departing.
Quéene on the Sea, haue not accordingly
gone to his Captaine (vnleſſe he were letted
by notorious ſickeneſſe, or other impediment
from God) or haue departed from his Cap-
taine without his licence vnder his seale. 18.
H.6.ca.19:2.& 3.E.6.ca.2: 4.& 5.Phil.& Mar.
ca.3:& 5.Eliz.ca.5.

If

Lay causes.

Egiptians.

If any Straungers, calling them selues, or being commonly called Egiptians, haue remained in the Realme one moneth: And if any person (being 14. yeres of age) which hath bene seene, or found in the fellowship of such Egiptians, or which hath disguised him selfe like to them, haue remained here or in *Wales*, by the space of one moneth, either at one time, or at seuerall times 1. & 2. Phil. & Mar. ca. 4: 5. Eliz ca. 20.

Roges.

If any vagabond (or Roge) haue after 60. dayes next after his marking through the eare, or iudgement to be so marked, fallen againe to Rogish life (being then 18. yeares olde, or aboue:) And if any such Roge, being vpon his sayd seconde conuiction taken into seruice for two yeares, haue departed within those two yeares against the will of him that by Recognusance toke him into seruice: And if any Roge being conuicted in the seconde degree, haue at any time after bene conuicted of Rogish life 14. Elizab. ca. 5: 18. Elizab. cap. 3. There can be none accessaries to these two last felonies.

Note that some felonies be here omitted, either because there is none vse of them nowe, or else for that they be for particular places: as,

The felonie of prouisours. 13 R. 2. Stat. 2. ca. 3.

The felony of Woolles & Woolsellers, 18. H. 6. c. 15. and certaine felonies in the Statutes of the Staple, 27. E. 3.

E.3. whereof I doubt. Lay causes.

The felonie of *Powdike*, 22. H.8. ca. 11: & 2. & 3. Phil. & Mar. ca. 19.

It seemeth also, by the 25. E. 3. c. 2. that there is a felonie, for riding armed &c. which (I thinke) is not so construed now.

If any persons haue commaunded, counsailed, waged, or procured to be committed any Petit treason, Murder, Manslaughter, Rape, Robberie, Burglarie, or other the felonies aforesaid. Accessaries before.

If any persons knowing the sayd felons, haue receiued, comforted, aided, abetted or fauoured them, before their attainder, or after. Accessaries after.

Hitherto of felonies and their Accessaries in lay causes.

If any person haue mayhemed an other of any member, whereby he is the lesse able to fight, as by putting out his eye, striking of his hand, finger or foote, beating out his foretéeth, or breaking his skull. And of their Accessories. Mayheme.

If any haue committed vnlawfull assault, beating, wounding, or such like trespasse, against the bodie of any man: Or haue with force & against the law taken the goods of an other, or haue done any trespasse in the lands of an other. Commission of the Peace. Trespasses.

If any Ordinarie, Archdeacon, Officiall, Shirife, Eschaetor, Coroner, Vndershirife, Bayly,

Lay causes.

Baylife, Gaoler, or other officer, haue by colour of his office, or for doing his office, taken a greater, or more excessiue reward or Fee, than belongeth to him: or haue taken any Fee or reward for expedition in doing his office, or haue vnlawfully exacted anie Oathe, or other vndue thing: Commission of the Peace.

Eschaetor.

If any Eschaetor (other than of suche a Citie, Borowe, or Towne, as hath auctoritie to make Eschaetors within themselues by letters Patēts of the Quēne, or hir Progenitors) haue taken vppon him that office in this Shire, or occupied it by him selfe, or an other, and had not then in this Shire, Landes, Tenements, or Rents, for life at the least of xx. *li.* by yeare: or haue solde, or sette to ferme that office, or made any deputies for whome he will not answeare, and whose names he hath not certified within 20. dayes after into the Eschequer, 12.E.4.9.

Or if any Eschaetor hath taken for the execution of any *Diem clausit extremum*, or other Writte in one Countie aboue fourtie shillings in all: or that xl. shillings where the landes are not founde to beholden *in Capite*: 23.H.6.ca.17: & Fitzh.143. Or hath taken for the finding of any Office of landes (not exceeding fiue pounde by yeare) aboue fiftēne

fifteene shillings in all, for all the thinges thereof, 33.H.8.ca.22.

If any Shirife haue letten his Countie, or any his Bailywikes, Hundreths, or Wapentakes, or haue returned in any pannelles, any Bailifes, Officers, or their seruaunts, or seruauntsseruaunts, or haue refused to lette to bayle (vpon sufficient suerties,) any person being in his custodie, bicause of any action personal, or bicause of Enditement in trespasse, and not beyng in for any condemnation, execution, vtlawrie, excommunication, suertie of the Peace, or commaundement of any Justice, or for beyng a vagabound: Or haue taken any Obligation by colour of his office, but onely to him selfe, & vpon the name of his office, and vpon condition onely to appeare according to the Writte, or Warrant: Or haue taken for an arrest, aboue twentie pence. Or if he or any other minister, haue taken any thing, for making of any Returne or Pannell: or aboue foure pence for the copie of a Pannell: or aboue foure pence for the saide Obligation, or for any warrant or precept: Or anie Baily aboue foure pence for making any arrest: or the Gaoler aboue foure pence, vppon the committing to his warde of any person arrested, or attached. 23. H.6.ca.10. Shirifes and their Ministers &c.

If

Lay causes.

Shirifes, arresting, or leauying fine for Enditements in his turne

If any Shirife, or other his minister, haue arrested, or imprisoned, or caused any fine, or raunsome, or amerciament to bee leauied, of any person, by reason of any enditement, or presentment made in the Shirifes turne, or lawday, without processe from the Justices of Peace for the same first obtained: Or haue not brought in such enditemēts and presentments to the Justices of the Peace, at their next Sessions. 1.E.4.ca.2.

Shirifes entring of plaintes, and leauying amercements

If any Shirife, or any his ministers, haue entered into his booke, any plaintes in any mans name, not being present in the Court, either in his owne person, or by sufficient and honest Attourney, or Deputie: Or haue entred anye moe plaintes than the Plaintife supposeth that he hath cause of action for: or haue leauied the Shire amerciaments without booke endented betwene them and two Justices of the Peace: Or if the Baylie of the Hundred haue made default in warning or executing any warrant against any Defendant in the Shirifes Court. 11.H.7.ca.15.

Bailie seruing warrant.

Shirifes must shew the Estreats vnder the Eschequer seale.

If any Shirife, or his minister, haue leauied any the debtes of the Quéene, without shewing to the parties the Estreates of the same vnder the Seale of the Eschequer. 42.E.3 ca.9.

If any Shirife, or Gaoler, haue denied to receaue

receiue felons by the deliuerie of any Constables or townesshippes, or haue taken any thing for receiuing of such. 4.E.3.ca.10. Shirife and Gaoler.

In liberties, the Baylifes, Stewards, and other ministers there, haue like fees and punishmentes for extortion, as Shirifes and their ministers haue out of liberties 27.H.8. cap.24. Fees in liberties.

If any Coroner haue refused to doe his office vpon the viewe of a deade body by misaduenture, without taking any fée therefore. 1.H.8.ca.7. or haue taken vpon the viewe of the bodie of a man slayne, or murdered, aboue thirteene shillings foure pence, of the goods of the slaier or murderer, if he had goods or (otherwise) of the towne where he was slaine in the day time and was suffered to escape. 3.H.7.ca.1. Coroners.

If any Ordinary, or his Scribe, or Register, haue taken moe, or greater fees for the probate of a Testament, or for Letters of administration, than he ought to take, that is to say, fiue pence for the Scribe, for writing the probate of a Testamente that shall be brought written in parchment, and likewise fiue pence for the Administration, where the goodes of the Testator, or Intestate be not aboue fiue poundes. If the goods be aboue fiue poundes, and not aboue fortie poundes, then Ordinaries.

Lay causes. two shillings fiue pence for the Ordinarie, & twelue pence for the Scribe. If they exceede fortie poũds, then two shillings fiue pence for the Ordinarie, and two shillings fiue pence to the Scribe, or else one penny for euery ten lines at ten inches length, at the Scribes election: the like shall be giuen for euerie copie of a Testament, or Inuentarie, or else after the rate of lines as before. 21.H.8.ca.5.

If the Ordinarie haue cited any man to beare witnesse in the Spirituall Court: or haue exacted any Oth in any cause, other than Testamentarie, or Matrimoniall.

Parson, Vicar, Curate. If any Parson, Vicar, or Curate, haue taken aboue iiij. pence for entring in ỹ Church booke the licence of a sicke person to eate flesh vpon the Wednesdayes: 5.Elizab.ca.5: Or aboue two pence for registring of a Testimoniall of any seruaunt, departing from one place to an other. 5.Elizab.ca.4.

Quere, If the taking of Mortuaries (or corps presents) against the Statute 25.H.8 c 6. be extortiõ, or no.

Clearke of the Peace. If the Clearke of the Peace haue taken aboue twelue pence for the inrolling of the bargaine and sale of any lande not exceeding fortie shillings by the yere: or aboue two shillings fiue pence if the lande exceede that value by the yeare 27.H.8.ca.16 Or if the Clearke of the Peace haue taken aboue two shillings

in

in all, for any licence and Recognusance of a Badger, Drouer, Ridder, or Lader, and for the registring thereof 5. Eliz. ca. 12: Or haue take̅ aboue twelue pence for a Recognusance of him that taketh a Roge into his seruice for one yeare. 14. Elizab. ca. 5. Lay causes.

If the Clearke of any Iustice of Peace, haue taken aboue twelue pence for any Recognusance of an Alehouse keeper, or Tippler. 5. E. 6. ca. 25.

If the Clearke of the market hath taken any common fine to dispence with faultes: or hath ridde̅ with moe than fiue horses, or hath taried longer in the countrie than the necessity of his businesse required. 13. R. 2. ca. 4. Clearke of the market.

If any Officer, haue in any Towne taken Sauage or Shewage (ꝑ is to say) any thing for the shewing of wares or Marchaundise that be truely customed to the Queene before. 19. H. 7. ca. 8.

If the Maior of this Towne of *Maidstone* (and so of other Townes in other Shires) haue taken aboue s. d. for sealing a Bushell measure, or aboue ob. for any other measure: or aboue s. d. for sealing C. weight, or aboue ob. for halfe C. weight, or aboue a farthing for any lesse weight. 7. H. 7. ca. 3: & 11. H. 7. ca. 4.

Sundrie other fees of Officers there be, as of Alnageours, Gaugeors, Sergeaunts at Armes and whereof there is not so common vse, & therefore I omit them.

Lay causes.

Purueyours. If any Purueyour of the Queenes Maiesties haue taken any thing of the value of fortie shillings or vnder, without ready payment therefore made: If any Constable, or Borsholder haue not (vpon request made,) assisted the owners to resist the Purueyours so taking: And if any of the Queenes Officers haue procured any to be arrested or vexed for such resistance 20.H.6.ca.8.

If any Purueyour haue taken or felled any timber trées (méete to be barked) but onely in barking time, except it were for the reparation, or building of the Queenes houses, or shippes: Or haue taken any more than the verie timber of such trées 5.Elizab. cap.8.

If any suche Purueyour haue taken any thing of any man, to the ende to spare him: or haue taken corne by any other measure than by the striked Bushell, or by any more than eight such Bushels to the Quarter: or haue taken carriadge therefore, without making readie payment, 25.E.3.ca.1:36.E.3.ca.3: & 1.H.5.ca.10.

Of Purueyours within fiue miles of *Oxenford*, or *Cambridge* see.2.& 3.Phil.& Mar.ca.15:14.Eliz.ca.11.

Informour. If any common Informour, or Promoter (as he is commonly called) haue compounded or agréed with any person for any offence against

against any penall Lawe, without the order or consent of some of the Courtes at Westminster, or haue willingly delayed, or discontinued his sute once commenced. 18. Elizab. cap. 5. Lay causes.

If any man haue raised hue and crie without cause, or it being raised, haue not bene readie at the commaundement of the Shirife, or at the hue and crie of the Countrie to pursue and arrest Felons, or suche as haue daungerously hurte any man: And if the Shirife or any Baylifes haue not followed the hue and crie with horse and armour W. 1. 3. E. 1. ca. 9: 3. E. 1. *Officium Coronatoris*: Statut. Winchester, 13. E. 1. Hue & crie.

If the Watche of twelue men in euerie Borough haue bene kept from sunne rising to sunne setting betwene Ascension day and Michaelmas day, to arrest straungers that passe by: Statut. *Winton*. Watch.

If any Lorde of the Soyle haue not enlarged the high way from market to market, so that no dike, bushe nor tree (except greate trees) bee within two hundreth foote of eache side thereof: Statut. *Winton*. High wayes.

If any persons (except the Quéenes seruauntes and officers in doing her seruices, and their companie aiding them in that behalfe) haue ridden, or gone armed by daye Ride or goe armed.

Lay causes.

or night: or haue brought force in affray of the people, before the Queenes Iustices, or otherwise Statut. *Northampton*, 2. Edw. 3. cap. 3.

Escape by negligence.

If any person arrested, or imprisoned for Felonie haue bene negligently suffered to escape. 1. R. 3. ca. 3.

Barrettours, Mainteynours, Embraceours.

If any bee a Barrettour, or a common quarrellour, or otherwise of euill name and fame, 18. Edw. 3. cap. 2: 34. Edw. 3. cap. 1. Or a Maintainour of quarrelles, or an Embraceour of Iuries, 33. H. 8. cap. 10: & 37. H. 8. cap. 7.

Barretour.

The woorde (Barrettour) may seeme to bee deriued, eyther of the French *Barat*, and so it seemeth to bee taken in the Statute of Champartie. W. 2. ca. 49. signifying deceipt, so that Barrettour should notifie a deceiuer: or else of the Latin Baratro (or Balatro as some write it) whiche betokeneth a vile knaue, or vnthrifte: and by a *Metaphore*) a spotte in the Common wealth. But whatsoeuer the woorde do properly denote, common vse (*Quem penès arbitrium est, & ius, & norma loquendi,*) taketh it for a common quarrellour, or a mainteinour of *Quarrelles*: and in that sense I thinke it to stande in the olde Statute, called *Ragman*.

Champartours.

If anie bee a Champartour, that is to say, one that moueth pleas or suites, or causeth or procureth them to bee moued, at their

their owne costes, to the ende to haue parte of the Lande, or other thing in variance. 33. E.1. Lay causes.

If any Iurour in any Enquest here, haue taken any thing of any man to make his presentment fauourable. 5.E.3.ca.10. Iurour.

If any person haue by him selfe, or other for him, giuen any liuerie of signe of companie, or badge, or reteyned any man, other than his householde Seruaunt, Officer, or learned man in the Lawe. 1.H.4 cap.7: 2.H. 4.ca.21: & 8.E.4.ca.2. Liueries of companies & badges.

If any companie of menne (other then menne of Fraternities, and men of Artes in Cities and Boroughes) haue made any one generall suite of Clothe, Hoodes, or Hattes amongst them, to bee knowen by. 7. H 4. cap 14.

If any person haue within these three monethes aduisedly and with a malicious entent agaynst the Queenes Maiestie, of hys owne imagination spoken any false, seditious and slaunderous newes, or sayinges of the Queenes Maiestie: or haue within the saide tyme aduisedly and with a malitious entent spoken any suche newes or tales to the slaunder and defamation of our sayde Queene, of the reporting or speaking of any other. 23. Eliz. cap. 2. False newes.

Lay causes.

If any person haue by writing, or open speache notified, that the eating of Fishe or forbearing of Flesh mentioned in the Statute for the Wednesday (5. Elizab. cap. 5.) is of necessitie for saluation of soules, or is the seruice of God, otherwise than as other politike Lawes be, 5. Elizab. ca. 5.

False tokens or letters.

If any person haue falsely and deceitfullie gotten into his possession any money, or other things of any other mans, by colour of false priuie token, or of counterfait letter made in an other mans name. 33. H. 8. cap. 1.

Vagabonds and Roges.

If any haue vttered them selues to be Proctours, hauing no sufficient auctoritie, or haue gone about idle, vsing craftie games, or pretending skill in Palmestrie, telling of destinies, or other abused sciences: or (that being whole and able in bodie, and not hauing land, Maister, nor meane to get their liuing) can giue no reckning howe they gette their liuing lawfully: If any Fencers, Bearwards, Common players in Enterludes, or Minstrells (not belonging to any Baron or personage of greater degree) Juglers, Pedlers, Tinkers, or Petit chapmen, haue wandred about without licence of two Justices of Peace: If any common labourers (being able in bodie) haue vsed loytering, or refused to worke

worke for the appointed wages: If any haue counterfaited licences, or passeportes, or haue vsed such, knowing them to be counterfait: If any Scholers of *Oxford* or *Cambridge*, haue gone about begging not authorized vnder the Vniuersitie Seale, or shippemen, pretending losse by sea, or delinered prisoners, begging for their fees, or trauailing to their countrie or friendes, not being lawfully licenced: If any seruant departing out of seruice, bee founde with a counterfait Testimoniall. Lay causes.

If any poore bodie haue trauailed from home towards *Bathe* or *Buckston*, without lawfull licence, or being prouided for in his or hir Parishe, haue notwithstanding secondly wandred abroad without licence: For all these bee Roges and Vagabounds. 14. Elizab. cap. 5.

If any Constable, or Borsholder, haue not done his best endeuour to apprehende suche Roges as haue begged or made aboad within their limits, or haue wilfully suffered any of them to escape punishment: And if any person haue giuen harborow, or other relefe to any such Roge: If any person haue hindered the execution of the Statute concerning Roges, or haue made rescous to any person endeuouring the execution thereof. 14. El. ca. 5: & Officers not punishing Roges. Giuing relefe to Roges. Disturbing of the execution of the law against Roges.

Lay causes. 5: & 18.El.cap.3.

Riots, Routs vnlawfull assemblies.

If any persons to the number of three, or aboue, haue bene riotously assembled to beate any man, to enter vpon a possession, or to doe any such vnlawfull acte, and haue done it in deede, or attempted to doe it: Or haue bene assembled togither in Rowtes for any common quarrell: or otherwise vnlawfully against the Quenes Maiesties Peace. Commission vnder the name of Conuenticles.

Rebellious assemblies.

If any persons (aboue the number of two, and vnder fiue.) being assembled, haue intended vnlawfully with force to murder, or slea any of the Quenes subiects: Or to cut or cast downe any inclosure, or bankes of any fishe pond, or conduit head, or pipe, or to doe any the deedes (mentioned in vnlawfull assemblies before) and haue not departed vppon proclamation, but haue attempted to doe any of those things.

Or if any person (being moued to make any rebellious assemblie) haue not within 24. houres after disclosed the same to a Iustice of the Peace, or to the Shirife: Or if any person haue stirred or procured any other to make such assemblie. 1.Mar.parl.1.ca.12: 1.El. ca.17.

Lying in awaite.

If any haue lyen in awaite, to mayheme, or kill any other. Commission.

If

Lay causes.

If any haue entered into landes, or possessions with force, or entering peaceably, haue holden the same with force.

Forcible entries.

If any person haue vnlawfully broken, or destroyed the heade or damme of any pond, mote, stew, or seuerall pitte wherein fishes are put by the owner therof: or haue wrongfully fished in any of the same, to the intent to take away the fishe against the owners will: Or haue wrongfully entered into any parke, or other ground, before this Statute inclosed, or after this Statute, (by the licence of the Prince) to be inclosed and vsed for keeping of Deere, and haue wrongfully hunted, driuen out, hurt, or killed, any Deere there: Or if any person haue vnlawfully taken away any Hawke, or the eggs of any Hawke out of the woodes, or groundes of any other person. 5. El. ca. 21.

Cut pond head, fishe: hunt Deere: take Hawkes, or their eggs.

If any person haue taken, or caused to be taken, vppon his owne, or other mens grounde, the egges of any Falcon, Goshawke, Lannar, or Swanne: or haue taken any Eirer Falcon, Goshawke, Tercell, Lanner, or Lanneret: or haue purposely driuen them out of their Couertes: or haue borne any Hawke of the breede of *England*, called a Mesle Goshawke, Tasset, Lanner, or Lannerst. 11. H. 7. ca. 17.

Take Hawkes egges: take Hawkes, or driue them away.

If

Lay causes.

Dogges, netts, firrets

If any Artificer, Labourer, or other Lay man, not hauing lands, or tenements of forty shillings by yeare, or any spirituall person not aduaunced to ten poundes liuing by the yeare, haue kept greyhound, hound, or other dogge to hunte, or vsed firrets, nets, or other engines, to take or destroye, Deere, Hares, Conies, or other gentlemans game. 13.R.2.13.

Trace hare

If any person haue traced, killed, and destroied any Hare in the snowe. 14.H.8.ca.10.

Take phesants or partriches.

If any person whatsoeuer, haue taken, or killed any phesants, or Partriches, with any maner of nette, or other deuise whatsoeuer, vpon the freehold of any other, without speciall licence, or in the night time, except it were vnwillingly, by lowbelling, or tramelling, who also did then & there presently let them goe againe: Or if any person haue hawked, or with his spaniels hunted in any grounde (not being his owne) where any corne or graine did then growe, or before it was shocked, or copped, without the consent of the owner of such corne or graine. 11.H.7.ca.17: & 23.El.ca.10.

Hauking in corne.

Vsurie.

If any person haue by him selfe or an other, sold any marchandizes or wares to any other, and haue within three monethes next after that, by him selfe or by any other bought the same, or any part thereof againe,

vpon

vppon a lesser price, knowing them to bee the same: Or if any person haue by any corrupt bargaine, mortgage, or other meanes, taken in gayne, aboue the rate of ten pounds for the hundred, for one whole yeares forbearance, and so after that rate, for more, or lesse. 37.H.8.ca.9: 13.El.ca.8. Lay causes.

If any haue within these two yeares forstalled, regrated, or ingrossed vnlawfully: Forstallers, Regrators, Ingrossers.

A Forstaller is he, that buyeth or causeth to bee bought, or maketh contract or promise for the hauing or buying of any victuall, or wares, comming by land or water towards any faire or market to be solde, or comming from beyonde the Sea towards any Citie, Port, Hauen, Creeke, or Roade of this Realme to be solde, before the same shall be in the Faire or Market, Citie, Port, or Hauen ready to be solde: Or that by any meanes maketh motion to any person for enhaunceing the price of the same: Or that doth dissuade, moue, or stirre any person (comming to the Market or Faire) to forbeare to bring any of the same to any Faire, Market, Citie, Port, or Hauen to be solde. *Forstaller.*

A Regrator is he, that regrateth or getteth into his possession, in any Faire, or Market, any corne, wine, fishe, butter, cheese, candles, tallowe, sheepe, lambes, calues, swine, pigges, geese, capons, hennes, chickens, pigeons, conies, or other deade victuall whatsoeuer, brought to any Faire or Market to be solde, and selleth the same againe in any Faire or Market kept there, or within foure miles thereof. *Regrator.*

An Ingrossor is he, that ingrosseth or getteth into his handes by buying, contract, or promise, taking (other than by demise, lease, or graūt, of land or of tithe) any corne growing in the fieldes, or other corne, or graine, *Ingrossor.*

Lay causes.

graine, butter, cheese, fishe, or other dead victuall, within *England*, to the intent to sell the same againe. But such as buye barlye or oates (without forstalling) & turne the same into malte or oatemeale, and sell it againe: and such victualler of all sortes, as buy victuall (without forstalling) and sell it by retaile againe, and Badgers, and Drouers, being lawfully licenced and not abusing their licences are excepted. So be all buyers of wines, oyles, spices, and other forrein victualls brought from beyond Sea hither, except fishe and salte onely 6. Ed. 6. cap. 14: 5. Elizab. cap. 12: 13. Elizab. ca. 25.

Seede corne.

If any person haue within these two yeares bought corne in any Fayre or Market for chaunge of his seede (hauing then sufficient for his house, and for sowing his grounde for a yeare) and did not bringe thither if he might) so much as he did so buye, and did not the same day sell it after the price then going. 5. E. 6. ca. 14.

Liue cattell.

If any person haue within these two yeares bought Oxen, Konts, Steeres, Kyen, Heylares, Calues, Sheepe, Lambes, Goates, or Kyddes, liuing, and solde any of the same againe aliue, before he hath kept them fiue weekes. 5. E. 6. ca. 14.

Tanned leather.

If any person not hauing the Quenes speciall licence, haue bought or ingrossed tanned leather, to sell it againe vnlesse he be an Artificer that maketh wares of such tanned leather, and worketh it in the same. 5. E. 6. ca. 15:

ca.15 : 1.El.ca,9.

If any person hath bought any wollen yarne, and haue not made clothe therof. 8. H. 6.ca.5 Or haue bought any wolle, but of the owner of the Sheepe, and of the Tithe. 14.R. 2.ca.4. Wollen yarne.

If any Butcher, or other person haue killed any younge suckling calue, to bee solde whole, or by retaile, which was calued betwene the first of Januarie, and the first of Maye 24.H.8.ca.7 : 14.El.ca.11. Sucking Calues.

Or haue killed any weinling, bullocke, steere, or heifare (vnder ye age of two yeares) to be sold whole or by retaile: *ibidem*. Or haue killed any calfe to sell, beeing vnder fiue weekes olde. 5.El.ca.8. Weinlings vnder 2.yeares Calues vnder fiue weekes olde.

If any person haue willingly (betwene ye first of Marche & last of June in any yeare) taken away or destroied the egges of any wildfowle (vsed to be eaten) from the place where they did lay thē. 25.H.8.c.11 : 3.E.6.c.3. Egges of wild foule.

If any person (feeding aboue .120. sharp sheepe for the most part of the yeare vpon his grounds ye be meete for mylchekyen, & wherein no person hath any commune) haue not kept for euerie .60. such sheepe reared vp one calfe, during the time of keeping such sheepe. 2.& 3. Phil. & Mar. cap. 3 : 13.El.ca.25. Or if any persō (feeding vpon his seuerall pastures Milche kyen and calues.

abone

Lay causes. aboue 20. oxen, ronts, steeres, scrubs, heifares, or kyne) haue not for euerie ten such beastes kept one mylche cowe, and for euerie two kyne weaned and reared vp yearely one calfe, except it chaunce to dye. *ibid.* He that feedeth such sheepe or beastes, onely to bee spent in his house, is excepted. *ibidem.*

Salmons. If any person haue taken any Salmons betweene the feastes of the Natiuitie of the blessed virgine Marie, and of S. Martine, in any riuers or waters: Or haue taken young Salmons at any mill pole, or other place, betweene the midst of Aprill and Midsomer: or haue at any time cast into any waters any

Frye of fish. nette, by which the Frye of any Fishe may bee taken. W. 2. ca. 47. 13. R. 2. ca. 19: 17. R. 2. ca. 9.

Frye of fish. If any perū haue with any net, or meane, taken and killed any frye or spawne of any fishe in any weare, floodgate, streame, or riuer (salt, or freshe) or at the tayle of any mill: or

Salmons. Trouts. haue taken there any Salmons, or Trouts, out of season, that is, being kippers or shedders: Or haue taken and killed any pickerell

Assise of fishes. vnder ten inches fishe in length, or Salmon vnder .16. inches, or Trout vnder .8. inches, or Barbell vnder .12. inches: or haue fished

Netts. in any the said places with any net, but such wherof euery meshe was .2. inches & a halfe broade:

broade: But Angling is excepted, and so is the taking of Smeltes, Loches, Minewes, Binheades, Gudgeons, and Eles, in places only where they haue bene vsed to bee take. 1.El.cap.17: 14 El.cap.11. Lay causes. Angling.

If anye Butcher, Fishmonger, Inholder, Tippler, Brewer, Baker, Poulter, or other seller of victuall, haue not solde ȳ same at reasonable prices, & for moderate gaines. 23.E.3 ca.6: 13.R.2 c.8. If any Bearebrewer, or Alebrewer haue solde theyr drinke at higher prices than haue bene appointed by the Iustices of Peace, 23.H.8.cap.4. Victuallers, prices reasonable, Brewers.

If anye Butchers, Bakers, Brewers, Poulters, Cokes, Fruiterers, or anye mysterie of anye of them, haue conspired, or taken any oathe, or promise, not to sel but at prices certaine agreede betweene them. 2.E 6.15. Victuallers conspiring.

If anye Butcher haue solde, or offered to sell, Swines flesh mezeled, or any flesh that dyed of the morreine: Or if anye other Victualler haue solde, or so offered to sell anye corrupte or vnwholesome victuall: *Stat. Pistorum, cap.7.* Corrupt victual.

If anye person haue, againste proclamation thereof made, transported or carried out of this Realme, anye Corne, Graine, or Malte, growing or made here; or anye Transport Corn, Beere, Butter, Cheese, Sea-fish, Herings, Wood.

Lay cauſes.

Beere, Butter, Cheeſe, or Mault in any veſſell (excepte to *Barwicke*, or the Marches thereof) without ſufficiente auctoritie, or any Seafiſhe, or Herring not taken by a naturall borne Subiecte here: or haue by any meanes conueyed, or wittingly conſented to conuey, anye of the ſaide things, to anye veſſell being on the Sea, or in anye place or Hauen of this Realme to bee tranſported ouer Sea, or into *Scotlande*, without ſufficient auctoritie: or if anye perſon hauing licence to conuey anye of the ſayde things, haue fraughted or laden his veſſell, or any part thereof, at anye moe places than one onelye: 1. & 2 Philip & Marie. cap. 6. 13. Eliz. cap. 13. 13. Eliz cap. 11.

If anye perſon haue boughte to ſell againe anye Butter or Cheeſe, vnleſſe it bee in open Faire or Market bye retayling it after the weigh of Cheeſe & Barrel of Butter, or after a leſſe quantitie: or vnleſſe it bee vnto Inholders for that which ſhal be retayled or ſpente in their houſes. 5. Edward. 6. cap. 21: & 14. Eliz. 17.

Fiſh packed. Bought of Strangers.

If anye perſon haue packed Fiſhe in Barrels, and haue mixed the Countable Fiſhe with the ſmall Fiſhe. 22. Edwarde. 4. 2. 11. H. 7. 23. Or haue boughte of a Straunger borne, or out of a Strangers bottome, any

any Herring (other than suche as commeth hither by reason of Shipwracke) not sufficientlye salted, packed, and casked. 5. Eli. ca. 5. Lay causes.

If anye haue broughte, sente, or receiued into anye Shippe or Bottome, anye Rammes, Sheepe, or Lambes, being alius, to bee conueyed out of the Quenes dominions: or if any person haue procured the same. 8. El. ca. 3. Rammes, Sheepe, Lambes transported.

If anye person haue dryed in this Realme to bee solde anye Fishe taken or broughte hither by anye Straunger borne. 13. El. ca. 11. Drying of fish brought by Straungers.

If any Straunger borne, haue broughte into thys Realme, anye Coddes, or Lings, packed in Barrels, or other Caskes. 13. Eliz. ca. 11. Cods or Lings in Caske.

If anye person haue within this yeare, taken vppon him to set price, to take toll, or to demaunde anye fare vppon any Fishe taken by anye Subiects of the Queene in theyr owne vessels: or if any Purueiour or other person haue within that time, by colour of any Cõmissiõ take any such Herring, or Seafish (other than ỹ accustomed composition fish for *Iseland*) against the will of the bringer in thereof: Or if anye person haue within that time caused to bee laden Set price or toll vpon Seafishe. Purueiours. Seafish and Herring.

Lay causes.

and carried in any vessel (whereof any stranger borne, is wholie or partlye owner or Maister) anye Fish, victual, or other thing, from one Porte or Creeke of thys Realme, to anye other of the same: Or if anye person haue within that time brought into thys Realme, or anye parte thereof, other than into the Ile of *Man*, or into *Wales*, anye Wine comming out of the Dominions of *Fraunce*, or any *Tholouse* Woad, but onely in such vessel whereof some Subiecte of the Quéene was then owner, or part owner. 5. El. ca. 5.

Wine, Woad in a strange bottome.

Wines retayled.

If anye person auctorized to sel Wine by retaile, haue wythin this yeare solde the same aboue the prices thereof limitted by the Quéenes Proclamation 5. Elizabeth, cap. 5.

Not aboue tenne Gallons of Wine.

If anye person, not being the sonne of a Péere, or Barron of thys Realme, nor hauing landes or profites to the yearely value of one hundred markes, or goods to one thousande markes, haue kepte in his house anye vessell of *Gascon*, *Guion*, *Frenche* or *Rochell* Wine, containing aboue tenne Gallons, to the intent to spende the same in his house. 7. E. 6. ca. 5.

Eate flesshe.

If anye person (other than by reason of age, sickenesse, childing, or licence) haue

haue wythin thys yeare eate flesh in Lent, or vpon anye fishe daye obserued by the custome of this Realme. 2.Ed.6.ca.19:5.Elizab. cap.5. Lay causes.

If any person, haue vpon any Wednesday (not falling in Christmasse weeke, or Easter weeke) eaten other than of one dishe or kinde of flesh, for the whiche also he shall then haue eaten at his table three ful dishes of Sea fishe of three kindes. 5. Elizabeth. cap.5.

If anye common Brewer, Baker, or Tippler, haue broken the Assise of Breade, Beere, or Ale: And if anye Steward of *Leete*, or Officer in Market Towne, haue taken any fine for breache of the Assise of Breade or Ale, in such cases, where corporall punishmente is appointed. 13. R.2. cap.8. Assise of Bread and Ale.

If anye person haue boughte or solde by anye vnlawfull weightes or measures: or if anye person haue boughte or solde in any Citie, or Market, with any weight or measure that is not lawfully marked, or signed: 11.H.7.4. Or haue bought Corne by heaped measure in anye place (excepte within shipborde) or haue vsed double measure, the one to buy, the other to sel with, 15.R.2.ca.4:11.H.7.ca.4:5.E.3.*de Pistor.* Weights & measures.

Lay causes.

Commune weights and measures.

If they of the Towne where the Kings Standerd is appointed to remain, haue not their common weightes and measures signed, or haue not thereby signed weightes and measures to all that haue required the same. And if the heade officers of Markette Townes haue not twice yerely made view and examination of weights and measures there. 11.H.7.ca.4.

Vessel for Ale, Beere.

If any vessell for Beere or Ale haue bene solde or put to sale, being made of vnsealonable wood, or not hauing thervpon ỹ mark of him that made it: Or if anye Barrell for Beere contains not of the Quenes standard 36 Gallons: the Kilderken 18 Gallons: the Ferkin nine Gallons: Euerie Barrell of Ale 32 Gallons: the Kilderkin sixteene Gallons, and euerie Ferkin. 8 Gallons. 23. H.8.ca.4.

Vessels for Wine, Honny, Oyle, Herring, Eles, Salm.&c.

If anye haue made or brought into thys Realme any Tunne of Wine, not contayning 252. Gallons: or Pipe not contayning 126 Gallons: or Tertian not containing 84. Gallons: or Hogsheade not contayning 63. Gallons: or But of Malmesey not contayning 126. Gallõs: Or Barrel of Herring not containing 32. Gallons of Wine measure: or Barel of Eles not cõtayning two & forty Gallons: or Butte of Salmon not contayning

hing 84. Gallons: or any Kilderkins, Tertian, Firkins, or Kundlets, but after ỹ same rate. 2. H. 6. 11: 22. E. 4. ca. 2: 1. R. 3 ca. 13: & 28. H. 8. cap. 14. Lawe causes.

If any haue made any vessel of Sope, that being emptie containeth not 32. Gallons for the Barrel: 16. for the halfe Barrel, and 8. for the Firkin: or weight aboue 26. ℔. the Barrel 13. ℔. the halfe Barrel, or 6. ℔. and a halfe the Ferkin 23. H. 8. ca. 4. Vessels of Sope.

If any Millers haue taken toll by heaped measure. 31. E. 1. *de Pistor & Bracia.* Toll Dishe

If any Artificers, Workemen, or Labourers, haue conspired, or promised together, or made anye oathes, that they will not doe their workes but at a certaine price or rate, or but at certaine times, or but a certaine worke in a day, or that one of them shal not take vpon him to finishe that which another hath begone. 2. E. 6. 15. Artificers conspiring.

If anye Arrowheade smith haue not wel boiled, brased, & hardened at the point with Stele, and marked with his marke suche heades of Arrowes and Quarrels, as he hath made. 7 H. 4. ca. 7. Arrowhead Smithes,

If anye person (during such time as he vsed the mysterie of Tanning of any Hide or skin of Ore, Steere, Bul, Cow, Calfe, red or fallow Deare, Goate, or Sheepe) haue vsed al- Tanners.

Lay causes.

the mysterie of a Shoemaker, Curriour, Butcher, or of any Artificer vsing the cutting or worcking of such Leather.

If anye person haue gashed or cutte the Hyde of any Bull, Oxe, Steare, or Cowe, whereby it is impayred: or if any Tanner haue put to sale any such Hyde.

If any person (other than such as at Michaelmasse. 1559 had freeholde of fortie poūds by the yeare, or had then any Tanhouse and did occupy tanning of Leather, or hath bene an Apprentise or taught as a hyred seruaunt seuen yeres to a Tanner, or hath bene wife to a Tanner, or the sonne of a Tanner, and brought vp foure yeares in that Arte, or the sonne or daughter of a Tanner, or such as hathe married the wife or daughter of a Tanner that leste to the same hys Tanne-house and Fattes) hathe tanned anye Leather, or hath taken any profit by the tanning therof.

If anye Tanner haue suffered any hide to lye in the Limes longer, than till the haire falleth off, or may be taken off, or haue vsed any other, than Lime, Culuerdūg, Yēdung, colde water, Wose of cold water, and Okēbark, in his tanning, or haue ouerlimed any Hides, in ỹ pits, or put thē in vessels before ỹ lime be perfectly wrought out, or haue

suffered

suffered his Leather to be frozen with the frost, or to be parched wyth the Fire, or the Sunne: Or haue tanned any rotten Hides, or wrought them negligently in the Wose, or haue not renued the Wose so ofte as neede was: Or haue not suffered the Hides for vtter soale and clout leather to lye in the Wose twelue monethes, and for the vpper leathers, nine monethes: Or hath not sufficiently tanned any Hide: Or hath tãned any hide of Ore, Steere, or Cowe, otherwise than whole, and without cutting any parte thereof away, except three or foure Bends ouerthwart for clout leather: Or haue tanned any Bull hide, Horse hides, or Sheepe skin: Or haue putte anye of them to sale, beyng tanned. Lay causes.

If any person haue putte to sale any tanned leather (red and vnwrought) vnlesse it be sufficiently tanned and dried, and vnlesse it be in the places appointed for it, in open Faires and Markets, and vnlesse it be first searched and sealed: Or haue departed with the hide of Ore, Steere, or Cowe, but onely whole, wythout any parte cutte off, except bends for clouting leather, as before.

If any person haue bought, contracted for, or bespoken any rough hide, or Calues skins in the haire (except salt Hides for the vse of

Lay causes.

shipps) but such persons onelie as shall tawe the same: or shall, and may, by this Act tanne the same: Or haue bought or bespoken any tanned Leather, not wrought into made wares (other than neckes or shreds of Sadlers, or gyrdlers, but such persons onelie, as will conuert and worke the same into made wares 5. Elizab. cap. 8.

Curriours.

If any Currior haue curried any leather, but in his owne house, and that being in a Corporate or Market towne: Or haue curried any Leather not well tanned, or not throughly dried after his wette season: Or haue vsed in his wette season any deceitfull meanes to corrupt the same: Or haue Curried vtter sole leather with any other stuffe than hard tallow, or inner soale, or ouer leather with any salt stuffe: Or haue not liquored them both throwly: Or haue burned, scalded, or shaven to thinne, or not wrought sufficientlye any Leather: Or haue gashed or hurte any Leather by any meanes, 5. Elizab. cap. 8. Or haue refused to Curry within fiue dayes in Sommer, and tenne dayes in Winter, well and sufficiently, any Leather, brought to him by any cutter of Leather, or his seruant, bringing wyth him good stuffe for the perfect liquoring of ye same 5. Elizab. 8.

If

If any Curriour haue (during the time that he hath occupyed Currying) vsed the feate of a Tanner, Shoomaker, Butcher. or other Artificer, vsing cutting of Leather. 5. Elizab. ca. 8. Lay causes.

If any Shoomaker haue made any Boots, Buskins, Shoes, Slippers, or Pantofles, or any part of them of English Leather wet curried, (other than Neres, Goates, or Calues skinnes, dressed like Spanish Leather) but of Leather well tanned and curried, or well tanned onelie, and well sewed with threede well twisted, waxed, and rosined, and with the stitches harde drawen, with hard Leathers, and without miring of Neates or Calues leather in the vpper leathers thereof: Or haue put in any Bootes, Buskins, Startups, or Slippers betweene the laste of September, and the twentith of Aprill) meete for any person, aboue foure yeares olde, any drie English Leather (other than Calues or Goates skinnes, dressed like Spanish Leather:) Or haue shewed for sale, anye of hys wares vppon the Sondaye morning before diuine seruice be ended 5. Elizab. cap. 8. Or haue putte into any of hys sayde wares, leather made of Sheeps skins, Bull, or horse hide, or into the vpper leather of Shoomaker

Lay causes.

of any Shoes, Startups, Slippers, or Pantofles, or into the nether part of any Bootes, (the inner soale and halfe of the Shoe only excepted) any parte of the woombe, necke, shanke, flanke, pole, or cheeke: Or into anye vtter soale, anye other than the beste of the Ore, or Steeres hyde: or into the inner soale other than the woombs, necke, pole, or cheek: or in ỳ treswels of the double soaled Shoes, other than the flankes of the said Hydes, 5. Elizab. cap. 8.

If any Lordes of Faire or Market, haue not appointed two or three honest and skilfull persons, to be searchers and sealers of Leather there: And if any the searchers and sealers so appointed, haue refused to cut the woombs from the vtter soale Leather truely tanned, and before it be Curried: or haue refused to seale good Leather: or made defaulte in searche: or not registred the bargaines for Leather, (taking hys due fees) or haue concealed anye faultes, 5. Elizab. cap. 8.

If any person haue denied any such searcher to enter into any place, to searche tanned Leather, and wrought ware, or to seise and carry awaye that whiche was insufficient: Or if any haue caryed out of any Faire or Market, anye whole Ore or Steere hide

hide (whereof any soale leather may bee cut) before the wombs be cutte off: Or haue put away any tãned leather (red & vnwrought) wythout registring the same, and the price thereof: or haue bought any tanned Leather, before it was searched and sealed, or haue carried it out of any Faire or Market before it was registred, 5. Eliz. ca. 8. Lay causes.

If anye Goldsmith, or worker of siluer, haue wrought any siluer, that is not so fine in allay as the Sterling, or haue not set his marke vpon his worke before he sette it to sale, 2. H. 6. ca. 14. And if any haue gilded any Sheathes, or any mettall but siluer, sauing the Spurres of Knights, and the apparell of a Baron, or suche as are aboue that estate, 8. H. 5. cap. 3. Goldsmiths & gilding.

If any Tile maker, haue not digged and caste vp his earth, for Tile, till after the first of Nouember, or haue not stirred and turned it till after the firste of Februarie following, or if he haue wrought it before ỳ 1. of March following, or if he haue not wrought and tryed it from stones, veines, and chalke: Or if he haue made, or any person haue put to sale any plaine Tile vnder tenne inches and a halfe in length, fiue inches and a quarter in breadth, and halfe an inch and a quarter in thicknesse: Or any roofe Tile vnder Tilemakers

thir-

Lay causes.

thirteene inches in length, and halfe an inch and halfe a quarter in thicknesse, with conuenient deepenesse: or any Gutter Tile, vnder tenne inches and a halfe in length, with conuenient thicknesse, breadth, and deapth: And if any searchers appointed for the ouersight of the true making of Tile, haue not done their effectuall indeuour and diligence in this behalfe 17. E. 4. cap. 4.

Ware workers.

If any person haue solde or sette forth, Candelles or other workes of Ware to sale, at higher price than after the rate of foure pence for the pounde, ouer the common price of plaine Ware betweene Merchant and Merchant 11. H. 6. cap. 12.

If any Clothmaker haue not sette hys Seale of lead to hys cloth, thereby declaring the iuste length thereof, to be tryed by the Water.

Clothmaking and Dying.

If any person haue stretched any Cloth aboue one yard and a halfe in length, or one quarter of a yard in breadth, or haue putte to sale, any cloth that hath shruncke more in the wetting than is aforesaide: Or haue stretched any narrow Streite or Kersey, aboue one yarde in length, and halfe a quarter of a yarde in breadth, or haue putte anye such to sale that haue shruncke more in the wetting 5. E. 6. cap. 12.

If

If any Diar of wollen cloth, haue Died any browne Blewes, Pewks, Tawneis, or Violets, that were not perfectly boyled, greined, or maddered vppon the Woade: and shot wyth good Coyke or Orchall sufficiently. Lay causes.

If anie person haue Died anie Woll for cloth called Russets, Marbles, Grayes, Bayes, or suche like, or for Hats, or Caps, vnlesse it were perfectly woaded, boiled, and madered: Or haue Died with Brazell, to the intēt to make a false colour, in any such Cloth or Woll: Or haue put any Flore, Chalke, Starch, or other deceiuable thing vpon anie Cloth, (except certaine Deuonshire and Cornwall straights. 7. E. 6. cap. 9) Or haue occupied any yron Cardes, or Picardes, in rowing of any wollen cloth: Or haue sold any cloth by any lesse measure thā after the true content thereof by the yarde, and inch: Or haue put to sale in this realm, any Cloth (being pressed) to be occupied in *England, Wales*, or *Ireland* 3. E. 6. cap. 2.

If anie Ouerlers of Cloth, appointed by the Justices of Peace for this yere, haue refused to be Ouerseers, or haue not within their charge, made due search thereof once euery quarter: And if any person haue interrupted them to make such search. 3. E. 6. ca. 2.

Lay causes.

If any Kentish broadcloth (except course cloth onelie, not exceeding fiue pound price) haue been made, that conteined not in length betweene 28. and 30. yardes, being wet: and in breadth seauen quarters within the lists: and in waight 76. pounde, being well scoured, thicked, milled, and fully dryed 5. E. 6. cap. 6. & 4. & 5. Phil. & Mar. cap. 5.

And so changing it after their Rates for other countries, as by those Statutes appeareth.

For regrating of Woolles by *Halifaxe* men, See 2. & 3. *Phil. & Mar. cap.* 13.

Linnen cloth.

If any person haue vsed, or caused to bee vsed any racking, beating, or rasting of any deceitfull liquor, or other meane, with any kind of linnen cloth, whereby the same became deceitfull, or the worse for the good vse thereof 1. Elizab. cap. 13.

Scites of religious houses.

If any owner of anye Scite or Precinct, and demeasnes of any late dissolued religious house (that was in yearely value vnder two hundred pound,) doe not keepe an honest and continuall housholde thereuppon, and doe not occupie so muche of the saide demeasnes in tillage, as was occupied by the space of twentie yeares, before the seauen and twentith yeare of King Henry the eight, 5. Elizab. ca. 2: 14. Elizab. cap. 11.

If any person hauing in his handes fortie acres

acres of arable and pasture togither, or of the one sort alone, apt for tillage, haue not wythin thys yeare tilled and sowen seasonably (wythout fraude) one Acre of lande wyth Flaxe sæde, or Hemp sæde, or bothe. Lay causes. Flaxe and Hemp.

But ground in a Parke for Deere, and Woodlande, Groue, Meadow, Fell, Fenne, Saltmarsh, Heath, Common groundes vnapte for tillage, groundes not tilled wythin fiftie yeares before this Statute, and groundes plowed onely for clensing of it, shall not be accompted in these sixtie Acres, 24. H.8.cap. 4: & 5. Elizab. cap.5.

If any person haue at one time kept aboue the number of 2000. sheepe of all sortes, against the purport of ỳ Statute 25. H.8.ca.13. 2000. Sheep

If any owner, Officer, or Ruler of any Faire or Market, haue not appointed one certaine open place there, for the sale of horses, geldings, mares, and coltes, and one sufficient person to take toll, and kæpe the sayde place: And if any such Toll gatherer, or hys Deputie haue taken anye more than one peny toll for one contracte, or for entring the names of the parties, and that in the same place onely, and betweene ten of the clocke in the morning, and Sun setting, 2. & 3. Phil. & Mar. cap. 7. Faire and Market for horses.

If any Inholder (dwelling in any Citie, Towne, Corporate, or Market Towne, Inholder.

Lay causes.

wherein is anye common Baker that hath been apprentice there seauen yeares) haue within his owne house made anye horsebreade: or (dwelling in any other thorowfaire) haue made it insufficiently and not of due assise 13 R. 2. cap. 8: & 32. H. 8. cap. 41.

Horsebread.

Hay and Oates.

If any Inholder haue taken any thing for litter: or haue taken excessiuely for Haye, or haue taken aboue one halfepenie in a bushell of Oates, ouer the common price in the market. 13. R. 2. cap. 8: & 4. H. 4. ca. 25.

Seruants not retainable for lesse thā one yeare.

If any person haue beene reteined into seruice to worke for any lesse time than a whole yeare, in any the artes of a Clothier, wollen Weauer, Tucker, Fuiler, Clothe-worker, Sherman, Dier, Hosier, Tayler, Shoomaker, Tanner, Pewterer, Baker, Brewer, Glouer, Cutler, Smith, Ferrour, Curriour, Sadler, Spurrier, Turner, Capper, Hattemaker, Feltmaker, Bowier, Fletcher, Arrowhead maker, Butcher, Cooke, or Miller. And if any person being vnmarried or vnder 30. yeares of age, and married, and being compellable to serue in any of those Artes, haue refused to serue.

Refusing to serue.

If

If any person being betwene the age of twelue yeares and threscore and being compellable to serue in husbandry, haue refused to serue in husbandrie after request thereof made by any person kéeping husbandrie: And if any person haue giuen any wages, contrarie to the rates of wages of seruants, and labourers, appointed and proclaymed. Lay causes. Greater wages.

If any person retained in Husbandrie, or any the saide Artes, haue after his reteinour expired, departed out of one limitte, towne, or parishe, into an other, wythout a Testimoniall: And if anye person haue accepted into hys seruice, anye so departing without shewing suche Testimoniall. Testimonial

If any person haue put away his seruant before the ende of his terme, without reasonable and allowed cause before a Justice of the Peace, or at the ende of his terme, without a quarters warning before gyuen: And if any seruant haue departed wythout such cause before the ende of the terme, or at the ende thereof, wythout such warning giuen before two lawfull witnesses. Put away, or depart away.

If any Artificer, or labourer, hyred by the daye, or weeke, haue not continued at hys worke so manye houres in the Vndertake worke, and not finish it.

Lay causes.

day as he ought: Or taking anye worke by the greate, haue vnlawfully departed before the finishing thereof.

Assault Master or dame

If any seruant, workeman or labourer haue wilfully and malitiously made any assault or affray vpon his Maister, or Dame, or other person, hauing the charge of suche workers or worke.

Labour in Hay time & Harueſt.

If any Constable, or head Officer, haue not vpon complaint put into the stocks two dayes and one night euery Artificer or person, méete to labour, that haue refused to labour in Hay tyme or Harueſt, for the getting or carrying of Corne, Hay, or Graine, béeing thereto appointed by a Iustice of Peace, or suche Constable, or head Officer.

Apprentices

If any person haue taken any Apprentice against the order of the Law: and if any person haue exercised any Arte, not being brought vppe therein as an Apprentice seauen yeares. 5. Elizab. cap. 4. & 5.

Poore.

Touchyng the abyding places and collections for the poore, there is no generall order taken in the Shire of *Kent*. 14. Elizab. cap. 5.

Prisoners releeued.

If the Churchwardens of any Parish haue not euery Sonday lenied the money for relieſe of the prisoners in the Gaole,

and

and one in euery Quarter payd it to the Constable of the Hundred: Or if that Constable haue not at euery Quarter Sessions payed ouer the same to the Collectour thereto appointed: Or if such Collectour haue not weekly distributed the same for relieke of the said prisoners 14. Elizab. cap. 5. Lay causes.

As touching stocks and store of &c. for the working poore, or houses of correction for the ydle poore, &c. little is done in this Shire as yet, but for the most parte left to the Parishes. 18. Elizab. ca. 3. Poore set to worke.

If any person aboue sixe yeres of age (except Maydens, Ladies, Gentlewomen, Nobles, Knights, Gentlemen of twētie marks by yeare in lands, and their heires, and such as haue borne Office of Worship) haue not worne vpon the Sonday and Holiday (except it be in the time of his trauaile out of the Citie, Towne, or Hamlet where hée dwelleth) vpon his head, one Cap of woll, knit, thicked, and dressed in *Englande*, and onely dressed & finished by some of the trade of Cappers 13. Eliz: cap. 20. Cappes.

If any man borne within the Quéenes dominions (except it be the sonne and heire apparant of a Knight, or the sonne of one of higher degrée, or suche as may dispende twentie pounds in lands by yeare, or reue- Silke.

Lay causes.

nues xx. poundes in landes by yeare, or reuenues for life, or bee worth two hundreth poundes in goodes, or haue beene head Officer in anye Citie, Borough, or Towne Corporate, or bee the Queenes seruaunt in ordinarie, and wearing hir liuerie, haue worne anye manner of Silke, in, or vppon his Hat, Bonet, Nightcappe, Girdle, Scabbarde, Hose, Shoes, or Spurre leathers: And if any person knowing anye seruant of his to offend herein, haue not within fourteene dayes nexte after such knowledge, put him out of seruice, if he were no Apprentice, or hyred seruaunt, and if he were, then if he haue not put him away at the end of his terme, or if, hauing putte him awaye therfore, he haue retained him againe within one yeare nexte after that offence 1. & 2. Phil. & Mar. cap. 2.

The Statute of Apparell (made 24. H. 8. cap. 13.) is not thoughte altogither so meete for this time, as it may appeare by some Proclamations published.

Bridges.

If any Bridges in the high wayes (beeing out of the Cinque Portes and members thereof) bee broken, or decayed, to the annoyance of Passengers, and if yea, then what Hundred, Citie, Towne, Parishe, or person certaine, or bodie politique, ought of right

right to repaire or amende the same 22.H.8. cap.5. Lay causes.

If the Constables and Churchwardens of anye Parishe, haue not in Easter weeke called their parishioners togither, and appointed ouerseers of the worckes for amendment of the high wayes, leading to anye Market, or haue not appointed the fyre daies for that worke: and if any suche ouerseers, haue refused that charge. Highwayes.

If any person, hauing a Plowe lande in tillage or pasture, or keeping a draught or Plowe, haue not found thereto one Waine or Cart, furnished to worke eight houres euerie of the saide dayes: Or if any other person beeing assessed in Subsedie to fiue pounds in goods, or forty shillings in lands, haue not likewise founde two able men: Or if any other housholder, or Cotager, haue not by him selfe, or an other so wrought euerie of the same daies.

If the Hedges, Ditches, Trees, and Bushes, in and on eache side of any suche high waye bee not kepte lowe, scowred, and cutte downe by the owners of the groundes adioyning: If anye such ouerseer, haue not within one moneth after any of the said offences done, presented the same to the next Justice of the Peace: And if any

Lay causes.

person occupying lande adioyning to anye suche high waye, haue caste the scowring of anye ditche thereof into the high way.

If any Ouerseers, Constables, or Churchwardens, haue not leuied the forfaitures for the offences aforesayde, and employed them vpon their saide high wayes, and accounted thereof. 2. & 3. Phil. & Mar. cap. 8: 5. Elizab. cap. 13: 18. Elizab. ca. 9.

Vnlawful games.

If anye person haue, for lucre maintained, or kepte anye common house, Alley, or place of bowling, coyting, closhe, cailes, tennis, dicing, tables, carding, shouegroate, or any other game prohibited by anye former Statute (as foteball, and casting of the stone) or any other vnlawfull newe game now inuented: If any Artificer of anye occupation, or any husbandman, Apprentice, Labourer, seruaunt at Husbandrie, Iorneyman, or any seruaunt of Artificer, or anye Mariner, Fisherman, Waterman, or Seruingman, (other than of a Noble man, or of him that may dispend one hundred pounds by yere, playing within the precinct of his Maisters house) haue played out of the Christmasse at any of the sayde vnlawfull games, or in the Christmasse out of the house or presence of their Maister. 33. H. 8. ca. 9: & vide. 12. R. 2. ca. 7. 8. 10.

If

Lay causes. Crosse-bowes and Gunnes.

If any person haue shot in, vsed, or kept, any Handgun, but such as is in stocke, and Gun one yarde long: or any Hagbut, or Demyhake, not being ¾ quarters of a yard lõg.

If any person (not hauing one hundreth poundes reuenue by the yeare) haue carried in his iourney anye Crossebowe bent, or Gun charged, vnlesse it bee to the Musters: If anye person haue shotte at large (other than at a Butte or Banke of earth in place conuenient) at any thing with any Gunne, in any Citie, Borough, or Market Towne, or within a quarter of a mile of anye of thẽ, or haue commaunded hys seruaunt to shote in Crossebow or Gunne, at any thing other then a Butte or Banke of earth: Or if anye person (not hauing a hundreth poundes by yeare) or not dwelling within fiue miles of the Sea coaste, or not dwelling in a house two furlongs distant from anye Citie, Borough, or Towne, doe keepe or haue in his house any Crossebow. 33. H. 8. c. 6. If any person hauing a hundreth poundes by yeare, and hauing seised any Crossebowe or Gun by vertue of this Acte, haue not broken the same in pieces within 20. dayes next after such seisure: *ibid.*

If any Merchaunt Straunger, being of any Countrie from whence Bowestaues

Lay causes.

haue bene sent into this lande, haue not (for euerie Tunne weight of burdē that hys vessel contayneth) brought hyther foure Bowstaues. 12. Edward. 4 cap. 2: 33. Henrie 8. ca. 10: & 37. H. 8. ca. 7. and for euerie Butte of *Malmesie* tenne Bowstaues. 1. R. 3. ca. 11.

Archerie.

If anye man being the Quéenes Subiect, and not hauing reasonable cause or impediment, and being within the age of sixtie yeares (except spirituall men, Iustices of the one Bench, or other Iustices of Assise, & Barons of the Eschequer) haue not a long Bow and Arrowes readie in his house, or haue not vsed shooting therein: or haue not for euerie man childe in his house betweéne seauen yeres and seauentéene of age a Bow and two Shaftes, and for euerie such being aboue seuentéene yeares, a Bowe and foure Shaftes, or haue not brought them vppe in Shooting: If any man, vnder the age of four and twentie yeares, haue shotte at standing prickes: or (being aboue that age) haue shot at any mark vnder eleuen score yards with any Prickshaft, or Flight.

Buttes.

If the inhabitants of any towne haue not made and continued their Buttes as they ought to doe.

Bowiers.

If any Bowier, haue not for euerie Bow that he made of Ewe, made also four others

Bowes

Bowes of apt wood to shote in: Or haue not solde his Bowes for all ages, at their due prices: If any straunger borne, not being a Denizein, haue vsed to shote in a long bow without the Quenes licence: or haue conueyed out of hir Maiesties dominions, any long Bow or Shaftes without such licence. 33. H. 8. ca. 9. Lay causes.

If any temporal person, hauing estate for life in freeholde, landes, or tenements, to the value of 200. lb. by yeare or vnder, and not aboue 400. lb. Or (not being other wise charged) and hauing fees, annuities, or copieholdlands, for life to ỹ value of 30. lb. or aboue, or hauing goods to ỹ valne of 10. lb. or vpwarde, haue not and kéepe not in a readinesse, suche Horses, Geldings, Weapon, armour, and other furniture for ỹ wars, as after ỹ proportion of his abilitie he ought by the Statute thereof made to haue and kéepe: 4. & 5. Phil. & Mar. ca. 2. Armour.

If any temporall person of full age (whose wife not being diuorsed, nor willingly absenting hir selfe from him, doeth weare anye Gowne or Peticoate of silke, or any Velvet in hir Kirtle, or in any lyning or part of hir Gowne (other thã in Cuffes, or Purfles) or any Frenchhoode or Bonet of Velvet wt any habi- Horsse for apparell.

Lay causes.

habilimente, paſſ, or edge of golde, pearle, or ſtone, or any chaine of golde about hir neck, or vpon any hir apparell) haue not founde and kepte a light Horſſe furniſhed, excepte he haue bene otherwiſe charged by the Statute to finde Horſſe, or Gelding. 33. H. 8. ca. 5: 4. & 5. Ph. & Mar. ca. 2.

Commune armour.

If the Inhabitauntes of anye Pariſhe, Towne, or Borough, haue not, or keepe not, ſuch common armour and furniture for the warres, as hath bene appointed for them by the Commiſſioners thereto aſſigned: 4. & 5. Phi. & Mar. ca. 2.

Maſters.

If anye perſon being generally or ſpeciallie commaunded to Muſter before anye (hauing auctoritie for the ſame) haue without true and reaſonable cauſe abſented him ſelf, or haue not brought with him in a readineſſe, his beſt furniture of array & armour for his owne perſon.

Captaines.

If anye perſon auctorized to Muſter, or to leuie men, for the Quenes ſeruice in warre, haue taken anye reward for the diſcharge or ſparing of anye perſon from that ſeruice: or if anye perſon hauing charge of menne for warreſare, haue not paide to his ſouldiours their whole wages conduict and cote money, or haue for anye gayne licenſed anye of them to depart out of

of the seruice 4 & 5 Phil. & Mar. ca. 3. Lay causes.

If anye Souldiour seruing the Quéene in hyr warres, haue giuen awaye, wilfullye purloyned, or put awaye anye Horse, Gelding, Mare, or harnesse, wherewyth he was set forth. 2. & 3. E. 6. ca. 2: 4. & 5. Phil. & Mar. ca. 3. Souldiours.

If any person haue conueyed, solde, or giuen into any place beyond the Sea, out of the Quéenes dominions, or to any Scottisheman, to be conueyed into *Scotlande* any Horsse, Gelding (or Mare aboue tenne shillings price) wythout the Queenes licence vnder hyr greate Seale, or priuie Signet, vnlesse it were to serue the Quéene in hir warres. 1 E. 6. ca. 5. Conuey Horsses. &c.

If anye person haue putte to féede in anye Forest, Chace, Moore, Marish, Heathe, Common, or waste grounde, within this shire, where anye Mares are vsed to be kept, anye stoned Horsse, being aboue two yeres olde, and not being foureténe handefuls highe, betwéene the lowest parte of the hoofe, and the toppe of the wyther: If anye such Forrest, or groũds, haue not bene yerelye driuen within 15. dayes after Michaelmas by the owners, or officers thereto appointed. 32. H. 8. ca. 13. Horsses and Mares for breede.

If

Lay causes. Sea Watch.

If watches haue not bene made vppon the Sea Coastes in suche places, and wyth suche number of people, and in such maner as it was wont to bée, 5. H. 4. ca. 3.

Parliaments. The Statutes of leuying the wages of the Knightes of the Parliament (made. 23. *H.* 6. cap. 11.) hath no gret vse.

Note also, that these Statutes following, are to bee openly published at any *Sessions* of the Peace. *viz.*

Pursuiours. The Statutes (36. E. 3. cap. 2. 3. & 4.) shall bee proclaimed by the *Iustices* of Peace euerie yeare, and thereof enformed the people. 23. H. 6. cap. 2.

Victualers, Al former Statutes for victualers being in force shal be proclaymed two times yearely, in the *Sessions* of *Iustices* of the Peace. 23. H. 6. ca. 13.

Archerie. The Acte for *Archerie* (33. H. 8. ca. 9.) muste bee proclaymed at the seuerall *Sessions* of the Peace.

The

Of the Enditementes, and Presentments giuen by the Iurours: and of the Matter and forme, and receiuing, and reiecting of them.

CAP. V.

THe preparatiō to this Enquirie thus made, let vs also loke vpon the performaunce of the same.

The vnderstanding (or knowledge) which the Iustices of the Peace do take by the trauel of these Enquirours, is by the mean of their reaport, put in writing, and commonlye called, an Enditement, or Presentment. betweene which two wordes (howsoeuer they be confounded in common speeche) me thinketh that there doeth easilie appeare a certaine difference. For I take a Presentmente to bee, a meere denuntiation of the Iurours themselues (or of some other Officer, as you shall hereafter heare) wythout anye other information: and an Enditemente to bee, the

Presentmēt.

Enditemēt.

the Verdite of the Iurours, grounded vppon the accusation of a thirde person: So that a Presentment, is but a declaration of the Iurours (or Officers) without any bill offered before: & an Enditement is their finding of a Bill of accusation to bee true.

The one seemeth to come of the Greeke Ἐγκαλῶ, I accuse: the other of the Frenche *Presenter*, to offer vnto a man, or to set before him.

But (taking them as others doe) lette vs consulte wyth M. Marrowe and others, that wee may learne of them what things bee requisite to make a good Enditement.

Iustices of the Peace must looke vpon Enditements.

For the Iustices of Peace ought to haue an eye vpon the Enditementes taken before them, and therefore they vse to commaund, that the Enqueste shall take no Billes, but suche as the Iustices themselues haue firste perused: Howbeit, if the Enquest do the contrarie, it is good ynoughe, so long as their bils doe carrie sufficient forme and matter with them.

And if the billes doe wante forme onely, the Iustices may sende for the Presentors, and cause thē to reforme them at any time before they bee remoued into the Kings Benche Stanf. 97. And therevpon it is sayde

(35.

35. H.6.14: & 12.E. 4. 18.) that if a bill of Enditement bée deliuered to a Iustice of the Peace, at (or before) the Sessions, which he promiseth to reade, and to deliuer to the Iury, and doth it accordingly, yet he shall not bée punished for it, in a writte of Conspiracie: But it may bée thereupon doubted, whether he should bée so charged or no, if (upon former communication had, and request made) he him selfe did draiwe and write the bill: and therefore the safest way is, to suffer the Clearke of the Peace, or some other Minister of the Court, to draiwe and frame it, But to the matter.

First, this is generall, that all Bills, Informations, and Enditements grounded upon penall Statuts, wherein the Prince onely is to reape the forfaiture, ought to bée commenced within foure yeares next after the offēce committed: and if the suite bée giuen to any other person, for him selfe and the Prince, or for him selfe onely, that ought to commence (for the Prince) within two yeares, and (for euery common person) within one yeare, next after the offence done: And otherwise it is mérely voide: vnlesse it bée otherwise limited by that speciall Statute vppon which the Informacion, Enditement (or Presentment) is made and framed. 7. H.8. ca. 3. And if

many bée ioyntly endited in one Enditemẽt, yet are they also eache one seuerally endited thereby. 5.E.4.5. Markam.

Secondly, all Enditements, for as much as they bée in the nature of a declaration, ought to conteine certaintie, and therefore (as sayth M. Marrow) fiue principall things (bée moste commonly) requisite in presentments before the Iustices of Peace. (*videlicet.*)

1. 1. The name, surname, and addition of the partie endited:

2. 2. The yeare, day, and place, in which the offence was done:

3. 3. The name of the person, to whome the offence was done:

4. 4. The name and value of the thing in which the offence was committed:

5. 5. The manner of the fact, and the nature of the offence: as the manner of the treason, murder, felonie, or trespasse.

The name, & surname. The name and surname of the partie endited must be certainly expressed: & if the Enditement bée of an Accessorie in felonie, the name of the principall must bée set downe also. For if the Enditement bée, *quòd A. mandauit cuidam ignoto occidere B. id quod fecit*, this is vicious: but in treasõ, trespasse, or maihem, where all bée principals, it may bée, *quòd procuranit*

curauit personas ignotas, to doe the treason, trespasse, or mayhem. Marr.

Besides the name and surname of the partie endited, there ought also (by the Statute) (1. H. 5. ca. 5.) in euery presentment wherein processe of vtlawrie lyeth, to bee added, his estate, degree, or mysterie, and the Countie, Towne, Hamlet, or Place, where he is, or was conuersant. And euen so ought it to haue bene at the commune Law also, as touching names of dignitie, made by creation, as Duke, Marques, Earle, Vicount, Archbishop, Bishop, Knight, or Serieant at the lawe, bicause euery of these titles were accompted percell of the name: But it was not so, for the names of Baron, Banneret, and Esquier, (which are but names of dignitie without creation,) nor for Chauncelor, Treasorer, Chamberlaine, Shirife, Coroner, Eschetor, Bayliffe, Deane, Archedeacon, Deacon, Prebendarie, or Person (which are names of dignitie by reason of office onely) vnlesse the presentment did charge them in respect of their offices, for then the name of office also, as Bailie, or Eschaetor, ought to bee vsed in the Enditement. Marr. Addition of estate, degree, &c.

But now Barō, Knight, Esquier, Gētlemā, Alderman, Widow, Singlewoman, Deane, Archdeacō, Person, Doctor, Clerke, are good Degree, or mysterie.

Additions of estate or degree, (as I take it) within the meaning of this Statute of Additions: But Seruant, Butler, or Chamberlaine, are not, bicause they bee commune to gentlemen, and yeomen, and thereby vncertaine. So, Merchant, Grocer, Mercer, Taylor, Broker, Husbandman, Hosteler, Labourer, Lighterman, Waterman, &c. bee good Additions of misterie: But Citizen is not, because it is no misterie, arte, or degree: Neither is Maintainer, Vagabound, Hereticke, Dicear, Carder or such like, any good addition, bicause they are euery one euil, & against the lawe.

Place. Also by the said Statute, (as I sayd) the Addition ought to comprehend the Countie, and the Towne, Hamlet, or place (knowne out of any Towne, or Hamlet) whereof the partie is, or was: So that if there bee diuers Hamlets in one Towne, he may be named of the Towne, or Hamlet: But if he bee named of a place knowen, & the place bee within a Towne, then he must bee named of the Towne. 35. H. 630. And if the Towne and the Parishe, beare both one name, he may be named of the one, or of the other of them: But if there bee two Townes in one Parishe, then he ought to bee named of the Towne, and not of the Parishe. 5 E. 4 129: & 22. E. 4. 2.

As

As for the *Alias dictus*, (whiche is often put in the Addition) the vse thereof is chiefly in Writtes grounded vppon especialties, and to make the writte and the writing to agree. For (as touching Enditemēts) if the partie bee not well named, both for his name of Baptisme, Surname, Misterie, or degree, and place at the first, then can not the *Alias dictus* make that good which was voide before. Marr. *Alias dictus.*

And it appeareth (1. E. 4. 2: & 2. E. 4. 1. 6.) that the Addition of the degree or mysterie must alwayes bee suche as the partie hath at the verie tyme: But the Addition of the place may bee of such where he was at any tyme before, so that then the worde *nuper* bee vsed there. Furthermore the Enditement must containe the daye, yeare, and place, in which the offence was committed. 8. E. 5. 8: 2. H. 7. 7: 25. E. 3. 43. And therefore if the Enditement suppose it the tenthe daye of Marche, without any more, that is not good: But if it bee, the tenthe daye of Marche laste paste, without shewing in what yeare, that is good enoughe: for the certaintie may be founde out by the Stile of the Sessions. So if it bee the tenthe daye from Easter Anno 23. Elizab. that is good: Likewise if it bee in the Vtas of the holye The yeare, day, and place.

Trinitie: and it shall bée there vnderstode to bée the verie daye of the Vtas (*videlicet*) the eyght daye after the feast, and not *quarto die* after the Vtas: But if it bée *in festo Sancti Petri*, it is not good, bicause there bée diuers feastes of Sainct Peter, and none without addition, sayth 3 H.7. Fitz. Enditements.22.

If it bée *Anno Domini millesimo quingentesimo octuagesimo primo*, the yeare shall bée accompted after the computation of the Churche of *Englande*, and not of *Rome*, or other Countries abroade. If the offence bée done in the night before midnight, the Inditement shall suppose it to bée done in the daye before: and if it happen after midnight, then it muste laye it to bée done the daye after. If it bée *in festo* of any Sainct, it shall bée construed to bée in the verie daye of the feast, and not in the Eue. But if the presentment bée in the Negatiue, or in the affirmatiue rising vppon a Negatiue, as that A. hath not scowred suche a Dewer, or that by the not scowring thereof suche Meadowes bée drowned, in these cases there néedeth no yeare nor daye. Marrow.

Place. And not onely this certeintie of the tyme, but that of the Place also muste bée conteyned

ned in the Enditement. for it was adiudged (25. E. 3. 43.) that a man shoulde not bee put to aunsweare to an Enditement of killing the Kinges Deere, bicause there was no place named, in which the offence was done: So an Enditement supposing a felonie to bee done in suche a place of suche a Countie, where in truthe there is no suche place in that Countie, is meerely voyde by the Statutes. 9. Hen. 5. cap. 1: & 18. Hen. 6. cap. 12.

If a man beeing striken in Midlesex, had dyed thereof in *Essex*, the Bookes. 3. H. 7. 12: 4. H. 7. 18: 6. H. 7. 10: 7. H. 7. 8: 10. H. 7. 28: & 11. H. 4. &c did not agree in which of these Counties he should be endited. But the Statute (2. & 3. E. 6. ca. 24) taketh order, that if the stroake (or poysoning) happen to bee in one Countie, and the death in an other Countie, the Enditement in the Countie where the death is, shall bee good: and likewise, that if a murder, or felonie, bee done in one Countie, and a man becommeth Accessorie thereto in an other Countie, the Enditement against the Accessorie shall be good in that Countie wherein he becommeth Accessorie.

Where (by the waye) you maye see in plaine wordes of this last Statute, that Iu-

stices of the Peace may take Enditements of Murder, as of Murder, though M. Fitzh. (Fol. 17.) deny it, saying, that they can not enquire of Murder sauing onely as of Felonie, or Manslaughter.

And you shall reade of an Enditement of Murder (before them) receiued. 3. H. 7. 5. agréeable wherunto was the opinion of Hales, and Portman, Justices, as I haue seene in a Reaport of Justice. Dalison.

The name of the person to whõe the offence was done.

The certaintie of the name of the person, to whome the offence is done, is also in most cases requisite.

And therefore, if the presentment bée, *quod bona & catalla cuiusdam ignoti cepit vi & armis*, or *quendam ignotum deprædauit*, it is not good for the vncertaintie, yet if *Felonicè* bée added, then it is in bothe the cases a good Enditement of Felonie, bicause of the Kinges aduauntage of forfayture thereby.

You may sée an Enditement (Fitzh. Endit. 9.) *quod* A. *verberauit, & 20. laccos pretii, &c.* was thought sufficient without shewing to whome the lackes did belong: whereat Maister Stanford (Fol. 95. maruaileth, saying that he salwe no cause why it should bée good, vnlesse it were for that the matter could not bée made more certaine. But peraduenture

aduenture certaintie in Inditements, was not in those dayes thought so nedefull, as nowe it is holden.

If the goodes of a Parson of a Churche bee taken, the Enditement muste be, *bona rectoris*, and not *Ecclesiæ*. And if the goodes of the Church, then *Bona parochianorum* and not *Ecclesiæ*: If they bee the goodes of a Maior and Communaltie, and the Maior dyeth before the Enditement, then it shall be *bona communitatis*, sayth Marr. but enquire of it, because there is no suche name of Corporation.

If the Enditement be, *quod A. verberauit B. & vnum equum prætu 20. solid. felonicè cœpit*, and doth not say, *ipsius B.* yet it is good ynough 30. H. 6. Fitzh. Endit. 9. But if it be *quod vnū equum prædicti I. cœpit*, and ther were no mention of I. before, then it is voide 9. E. 4. 1.

If the goodes of a man be taken, and he maketh his Executors, and dyeth, the Enditement shall be, *bona testatoris*, but if they were taken after his death, it shall be, *bona testatoris in custodia Executorum existentia*. If the Enditement be, *quod* A. *furatus est tunicam hominis ignoti, quem inuenit mortuum*, that is not good. 11. R. 2. Fitz. Endit. 15. If a man take away a coate Armour, which hangeth ouer a Tombe in a Church, the Enditement shall say, *bona executoris* of him whose Tombe it

is: but if a graue Stone bee taken away, the Enditement shall be, *bona Ecclesiæ*: Mar. If my goods be taken by a Trespassor, and an other taketh them from him, the Enditement shall be, *bona* of him which had the last possession. But if I baile goods to one, from whom they be robbed, then it shall be, *bona* of mee in his keeping Marr. If an Enditement be, *bona Capellæ in custodia, &c.* or *bona Domus*, or *Ecclesiæ tempore vacationis*, it is good 7.E.4.14

The name and value of the thing.

The name (& value) of the thing in which the offence is committed, ought also to bee comprised in the Enditement: for an Enditement of the taking *bona & catalla*, whether it be in Trespasse or Felonie, is not good, for the vncertaintie what goodes they be: And if it be of dead things, it may be *bona & catalla* expressing the names thereof in certainetie: But if it be of things liuing, it shall not say *bona & catalla* but *equum, bouem, ouem, &c.*

Againe the value (or price) of the thing is commonly to be declared: in Felony, to make it appeare from petit Larcenie: and in Trespasse, to aggrauate the fault and fine: But yet an Enditement of the taking of beastes *feræ naturæ*, as deere, hares, partridges, or pheasantes, is not good, vnlesse they be taken in a Parke, or Warrein, that be liberties. 8.E.4.

5.

5. So of Charters, because their value can not be esteemed.

In all cases (sayth M. Marrow) where the number ought to be expressed in the Enditement, there also it must be said, *pretij*, or *ad valentiam*: as if it be of the taking of doues in a douehouse, or young haukes in a woode: And where it is of a liue thing, or things, it must be *pretij*: and so of a dead thing in the singular number: but if it be of dead things in the plurall number, then it must be *ad valentiam* and not *pretij*. Againe, if it be of a deade thing that goeth by weight, or measure, the forme is to say *pretij*, and not *ad valentiam*. *Pretij*, & not *ad valentiam* &c.

If the Enditement bee of taking away Coyne, which is not currant, it shall say *pretij*: otherwise it is of money currant, because that carrieth his value and price with it. If it bee *quòd proditorie fecit grossos, vel denarios*, it shall be, *ad valentiam*, and it shall not say, 20. *libras in denarijs*, or *in pecunia Domini Regis*, but *ad instar pecunie Domini Regis*. Marr.

Sundry other dainty and nice differences doth M. Marrow make, where a man shall say *pretij*, & where *ad valentiam*, binding the Enditement to that rule which the Register taketh for originall Writs of Trespasse: But for

for as muche as Nele (9.E.4.26) saieth, that Enditements be not tyed to any such forme, and because that rule of the Register is not very constantly obserued in Trespasles themselues, as a thing not materiall in the opinion of M.Fitzh. in his Nat. Br. (Fol.88.) I thought it best to make choice of these (that I haue) for publicque vse, and to leaue the reste for priuate learning.

The manner of the facte, and nature of the offẽce

To the further certaintie of the Enditement, the manner of the fact it selfe, and the nature of the offence, ought to be mentioned also, for if the Enditement be, *quod A. captum pro felonia, felonice & voluntariè ad largum ire permisit*, this lacketh the certaintie for what felonie he was taken, and is thereby voide 8. E.4.3. So, if it be, that a man made 100. shillings of Alchimie *ad instar pecuniæ Dominæ Reginæ*, and doe not shewe like to what money, as groates, or shillings, &c. it is voide Fitzh. Endit.10. If the Enditement be, that a man is a common theefe, wythout shewing especially, in what thing, it is nothing worth 22.lib.Ass.Pl.75. And so, if it be of a generall extortion againste an Ordinarie, wythout shewing in what, by 25.E.3.Stat.3.cap.9. And so also, if the Enditement stande vppon these termes onelie, *Insidiatores viarum, & depopulatores agrorum*, by 4.H.4.cap.2. And there-

vpon

vpon the Court laide, (17.E.4.4.) that vpon such an Enditement, the partie shall bee dismissed. Howbeit the Commission of the Peace hath the wordes, *in insidijs iacuerint*, but it goeth further, *ad gentem nostram mayhemandam*.

Neyther is it good in an Enditement against an Accessorie. to say, that he receiued the goodes, without telling, that he receiued the Felon also. 27.lib.Ass.Pl.69: 9.H.4.1: & 25.E.3.39: nor without telling, that he (knowing it) receiued him feloniously 7.H.6.42. vnlesse he receiue one that is attainted of felonie in the same Countie: for then hee must at his perill take knowledge of the Attainder, and so no suche mention of knowledge needeth to be vsed, as it is holden 8.E.4.3. *Sed quere inde.*

And if such an Enditement be, *Sciens ipsos quatuor homines feloniam, &c. fecisse, apud* D. *felonicè recepit*, it is not good, for that it sheweth not, which of them he receiued 30.H.6. cap.2.

Concerning the nature of the offence, thys is to be obserued, that in an Enditement of treason (presentable before the Iustices of Peace) the worde Proditorie ought to be vsed. In the Enditement of Murder, *murdravit* is necessarie. 9.E.4.26. for if it be, *quod* A. *occidit*

occidit B. *malitia præcogitata*, it is not enough, because one man may kill an other so, in a Wager of Battaile, and yet be no muderer. And for the same reason, if it be of Mãslaughter, it must be *Felonicè*.

An Enditement was, that the sonne had taken the sicke father, and carried him into the cold weather, whereof he died, but it was disallowed because it lacked *felonicè*. Fitzh. Endit. 3. Againe, if the Enditement be of Burglarie, then it must be *Burglariter*: if of Rape, then *Felonicè rapuit*, for (without *rapuit*) it suffiseth not to say, *Felonicè cæpit Aliciam, & eam carnaliter cognouit*.

If it be, *Furatus est*, it seemeth to Marrow to be good without the worde *felonicè*, but 18. E. 4. 10. is against him.

If it be *felonicè abduxit vnum equum*, it is not of value without saying, *cæpit*, neither is *cæpit* good alone, without *abduxit*: for it must bee *felonicè cæpit & abduxit*. Fitzh. Endit. 2. And if it be, *felonicè succidit arbores, & illas asportauit*: or, *vi & armis succidit arbores, & felonicè asportauit*, neither of thẽ will make it Felonie, because the trees be a parte of the freeholde, whereof no felonie can be committed: But if it be, *vi & armis succidit arbores, & eas felonicè* (at an other day after) *cæpit & asportauit*, that will make it Felonie, by reason

son that the seueraunce of the trées from the freeholde, & the taking, were at diuers times. Marr.

And albeit the Enditement be of a Mayheme, it must say, *felonicè mayhemauit*, and yet mayheme is no Felonie, but an hainous, and (as it were) a Felonious Trespasse But where in an Enditement of felonie, the word *felonicè* wanteth, there the Enditement may neuertheless stande good to make it a Trespasse. 2.H.7.7:6 H.7.4:& 18.E.4.10.

And in an Enditement of Trespasse, it séemeth that the wordes *contra pacem* ought to be yet still: But the necessitie of the wordes, *vi & armis*, (viz.) *cum baculis, cultellis &c.* be taken away by the Statute. 37.H.8.ca.8. Neuertheless M. Stamf. (F.94.) is of the opiniõ, ỹ it is not amisse to vse those wordes, so long as the circumstances of the facte doe require them, for (sayth he) The circumstances of an act, doe either aggrauate, or diminishe the offence therein. If the Enditement be, of forcible entrie, then the wordes *vi & armis* be nédeleste, because they are necessarily employed in the Force, Marr. And if the Enditement be founded vpon a Statut, it ought to say, *contra formam Statuti*, or (where many Statutes doe concerne one offence, as in the case of Liueries and suche like)

contra

contra formam diuersorum Statutorum. But it is not of necessitie, that the Statute be rehearsed, but only that the offence against the Statute be sufficiently described.

Thus farre of these pointes. But now let vs with a fewe wordes consider what Enditementes be receiueable by the Iustices of Peace, and what ought to be reiected by them.

Enditements, to be receiued or reiected.

Generally, they may receiue Enditements before them selues, of all causes, being either within their Cõmission, or within ỹ Statuts whereof they haue to enquire. And they may also receiue Enditementes taken before the Shirife in his Turne lawfully, that is to say, so that the Turne be holden within the moneth after Easter, or within the moneth after Michaelmas, and so that those Enditements or Presentmentes be indented and sealed betwene the Shirife and the Iurours, and so that they be made by the Oth of twelue men at the least and that those Iurours be of good fame and *Legales homines*, and may dispend yerely twenty shillings of Freehold, or twentie fiue shillings eight pence of Copiehold W.2.ca.14: 1.E.3.ca.17: 31.E.3.ca.14: 1.E.4.ca.2: & 1.R.3. ca. 4: And for this purpose the sayd Statute (1.E.4.ca.2.) bindeth the Shirife to certifie to the Iustices of Peace at their next Sessions, the

the Enditementes founde in his Turne or Lawdaye. It seemeth also (by way of admitting) in the Booke (27.H.8.2.) that the like ought to be done of the Presentmentes of felonie in any Leete, by vertue of the said Statute of 1.E.4.ca.2: But that is further to be enquired of, for I find no better warrant for it. This is certaine, that Iustices of the Peace ought to receiue Enditementes found in any Leetes or Lawdayes, vpon the Statute made for the breeding of horses: to which end also, the Courtholders of such Leetes are bound to certifie the same vnto them within the space of forty dayes. 32.H.8.ca.13.

Iustices of the Peace haue none auctoritie to receiue an Enditement, of the killing of a man *se defendendo*, sayth Stamf.15. as he had heard say. But enquire further thereof: for though it be not felonie, as appeareth by the Statute of Glo.c.9. Yet be their other words in their Commission large enough to giue them power to heare and determine such an offence. But they are not to receiue an Enditement of the killing of a Hart proclaimed, for the Iurisdiction of it belongeth to the Iustices of the Forest.21.H.7.30.Fineux. And as it seemeth they may reiect an Enditement that findeth any matter of Recorde, as Vtlawrie, or such like, vnlesse it be shewed vnto

the Iurours *sub pede sigilli*: for Iurours are to finde matters in deede onely, and not of Recorde, 1.H.7.6:& 3.H.7.1.& 10: And so, if the Shirife will offer Enditementes of Luernes, Rauiſhment of Women, or of Felonies by Statutes, or of ſuch other cauſes, whereof they haue no power to enquire in their Turnes, the Iuſtices of the Peace ought to reiect them, 4.E.4.31:8.E.4.5:22.E.4.22:& Stanford.87.

Thus much for the better remembrance of our Iuſtice of the Peace, I thought to ſay of Enditementes, the rather becauſe it behoueth him to iudge of them, and for that they be the chiefe grounde worke whereupon the whole Triall is afterward to be built and framed.

Of

Of the *Presentementes* and *Informations* of Officers, and other men.

CAP. VI.



HAuing shewed how these Iustices take knowledge by the labour of Iurours in Enquests, it followeth to declare also howe they may haue vnderstanding by other men: And that is to be done, either by the Presentment of persons publicque, or by the Information of priuate men.

In some cases therfore, these Iustices may heare one an other: for euerie Iustice of the Peace, may (vppon his proper knowledge) make Presentment at the Sessions of any offence done against the Actes (2. & 3. Phil. & Mar. ca. 8: & 5. Eliza. ca. 13.) concerning the amendment of the High wayes. And in this, & such like cases, his reaport hath the force of a Presentment of twelue men: So that he and his fellowes may proceede vpon it. 21. H. 6. 5. Of like value is a Presentment made at the

Presentments of *Iustices* of Peace and *Constables.*

nert Sessions by Searchers appoynted to examine the true making of Tile. 17.E.4.ca.4. And of like strength also (as I thinke) is the Presentment of the Constables concerning sundrie poinctes contayned in the Statute of *Winchester*.13.E.1.

Informatiõ by priuate men.

This Court may also bee giuen to vnderstande by the meanes of priuate men: and that eyther for the Queene onely, or for the Queene and them selues, or in some speciall causes for them selues without the Queene.

That which is for the benefite of the Queene, or for hir and the partie, is sometimes moued by the free offer of him that openeth the matter, and sometimes wrought by commaundement of the Court.

Free & Voluntarie, information.

The free motion of the partie, is sometimes by word only, which is properly but a Suggestion: and sometimes by writing, named, a Bill, Plaint, Complaint, or Information: all which be not alwaies of one force in this businesse.

For, albeit that we reade (1.E.5.6.) that the Courte of Chauncerie will sometimes both take knowledge, and also award Processe, vpon an Information by word in the behalfe of the Prince, and that 39.H.6.41. also admitteth such a matter; Yet I thinke that

that before Iustices of the Peace, these Suggestions and Informations both (bee they by worde, or writing) are but of the force to stirre vp the Iustices to recommende the cause to the Enquest, and not to award any Processe vpon them: vnlesse it be in certaine causes, where that validitie is specially giuen them by the Statutes, as you shall hereafter perceiue.

There was once a time (I confesse) when Iustices of the Peace might haue awarded Processe vpon an Information (for the King only) of offences against any penall lawes, euen as they may yet vpon Enditementes against the Peace: But that lasted not long, and therfore that course is holden now in speciall Statutes only.

Neuertheless, at euerie Sessions (sayth Iudge Priot. 35. H. 6. 15.) the Iustices of the Peace do vse to make Proclamation, that if any will informe for the Prince, he shall be heard: and thereupon any man may come in, and may both informe the Iustices of the Peace, and giue euidence to the Enquest without daunger of Conspiracie, by the opinion of the Court in the last said booke.

And as that which ariseth vpon Presentment or Enditement, is properly called the suite of the Queene: So this other (whether

it be by Bill, Plaint, Complaint, or Information, is most aptly tearmed the sute of the partie, at whose sute the Iustices of the Peace may heare of the abuse of Innekeepers, and Victuallers, and of Extortions, and Regratories, and perhappes of higher offences also, either for him selfe or for the Queene, but of the other Articles in the Commission, at the sute of the Queene only, by ỹ expresse forme of the wordes in the last *Assignauimus* of the Cõmission of the Peace. But therein among other, some amendment (if I be not deceiued) is to be desired: if it be not ment ỹ they shall hold plea of Appeales betweene party & party, which the Statute 8 H. 6. c. 10. seemeth also to allow vnto them. In other Statuts at large such rules are to be followed, as they themselues do prescribe.

And in this Information, the Statute of Additions (1 H. 5. ca. 5.) seemeth vpon the bare wordes to haue no place, for Informations be not mentioned in it: and vpon that reason the Court (13. H. 7. 21.) did holde it cleare, that if Rescous bée returned by the Shirife, against certaine persons wout their Additions, yet in ỹ case they may well be Utlawed vpon it.

For forme of Information.

The other compulsorie informatiõ, groweth by examination of witnesses called into the Court, and is set forth in the Statute of

Drouers,

Drouers. & Badgers, (5. Eliz. ca. 12.) where it appeareth, that vpon the examination of two lawfull witnesses, the Iustices of Peace may make Proceſſe, as if it were vpon an Inquiſition of twelue men.

The like may they do, vpon the Statute of Armour 4. & 5. Phil. & Mar. ca. 2. And the verie like alſo may they doe vppon the Statute made againſt Foreſtallers. 5. E. 6. ca. 14. which laſt ſayd Statute ſeemeth (for this point) to haue bene followed, as a Paterne, by ỹ other two: ſo right they tread in ỹ ſteps of ỹ ſame. Vnto alſo you may adde, the examination of the M & Mariners of ſhips, wherin corne or victuall ſhall be tranſported againſt the meaning of the Statute 1. & 2. Phil. & Mar. ca. 5.

Sute betwene party and party.

Thus much, of the knowledge of cauſes exhibited by ſuch as either doe it at large for the Queene onely to haue the offence puniſhed, or be ſpecially allured thereto by regard of benefit growing in common to them with the Queene thereby. Now of thoſe that ſeeke to informe the Court for the profite due to them ſelues alone.

The knowlege that commeth this way, is by the priuate ſute, and proper action of the partie, and is therefore in the Statute (11. H. 6. ca. 6.) tearmed a ſute betwene partie and partie, whereof that Statute had no leſſe

consideration, than of those other suites that bee for the Queene her selfe: and therefore prouided, that they also should not be discontinued by new Commissions of the Peace to be made.

I know, that there be not many Statuts which do giue power to ỹ Iustices of Peace, to hold Plea betwene partie and partie, and I thinke it hath not bene often experimented vpon those very Statutes which do giue it: and how the Iudges do expound this verie Statute I can not tell.

Neuertheless, because I may neither wittingly conceale any such parte of their auctority & Iurisdiction, although it were but my opinion, nor safely reaport it without some proufe, I will giue you one example, of this kinde (as I take it) and leaue the rest to further search.

The Iustices of Peace haue power to enquire, heare, & determine, of all the defaultes against the Statute (made 23.H.6.ca.11.) concerning ỹ leuying of the wages of ỹ Knights of the Parliament) as well by enquirie at the Kings suite, as by action at the suite of ỹ party.

In this and suche like (as in Appeales by warrant of the large words of the Commission as hath bene sayd) the Iustices of Peace ought to proceede after the vsuall manner

of

of other Courtes of Recorde at the Common law, (if I doe not miscall it) and therefore I wil goe no further with it, but will prosecute that hearing and determining that more properly pertaineth vnto them, if first I may shew you, how they are sometimes preuented in that behalfe.

Of the Impedimentes of proceading vpon *Endytements*, before the Iustices of Peace.

Cap. vii.

IT falleth out not seldome, when Iustices of the Peace haue taken an Enditement founde before them, that they can not proceede to hearing and determining vpon it: either bicause it is grounded vpon some such Statute as giueth vnto them no further power, but onely to enquire thereof: or els bicause the Enditement is taken out of their handes by *Certiorari*, and conueyed to Iustices of a higher auctoritie, at the sollicitation and by the meanes of some parties grieued,

to the end that either they may trauerse them aboue, or there auoids them for insufficiencie of forme or matter.

And therefore, Iustices of the Peace may only enquire, of certaine the offences against the Actes. 1. El. ca. 2: & ca. 3: 5. El. ca. 1: 13. El. cap. 2. touching the acknowledging of the Queenes supremacie, or the seruice of God, or comming to the Churche, or the Establishment of true religion: as you may see. 23. El. cap. 1.

And they may onely enquire, of any the Treasons, or Misprisions of treasons, made by the same Acte. 23. El. ca. 1.

Neither can they goe any further, than onely to enquire of, and to endite the offenbours against any the Articles of the Acte made (23. El. ca. 2.) concerning seditious rumors against the Queene.

In the rest (so farre as I haue found) their power of Enquirie is accompanied with the auctoritie to heare and determine also. For this want of Jurisdiction is not found in the Commission of the Peace it selfe, but onely in certaine Statutes that (for weightie causes) doe restreine this further proceeding.

By what meanes such Enditements shall bee remoued to those higher Courtes, I will shew you when I come to speake of Certifying

ing

ng the Recordes of the Sessions: and will now goe on with those other Enditements that bée remoued by labour of the parties.

Albeit, that in the remouing of pleas betwene partie and partie, from inferiour to higher Courts, by *Tolt, Pone, Recordare, &c.* there was wont to bée a probable cause alleaged, for which the same were remoued: yet in this case of ꝑ Crowne there nédeth no cause to bée comprised in the writ of *Certiorari*, bicause they all bée the Courtes of the Queene, and it breédeth neither iniurie to the offendour, nor losse to any other person, in what Court soeuer the offence bée tried.

Enditements remoued by labour of the parties.

This *Certiorari* then, may commaunde either the Recorde it selfe, or *Tenorem Recordi*, to bée sent vppe: and it ought to bée obeyed accordingly. For, vpon fayle thereof, first an *Alias*, then a *Pluries* (*vel Causam nobis significes*) and lastly an Attachment, shall goe out against them that should sende it, as M. Fitzh. noteth in his Nat. Br. Fol. 245. but I haue heard that they vse also a *Sub pœna* at this day.

And albeit the *Certiorari* be a *Supersedeas* of it selfe, yet may the partie vpon the *Certiorari* purchased, haue a *Supersedeas* also, directed to the Shirife, & commaũding him that he arrest him not vpon that Record, before the Iustices

of

of Peace, Fitzh. *ibid.* Fol. 237. In which place also he doubteth, whether the Iustices of Peace themselues ought of dutie to awarde their owne *Supersedeas* to the same effect, after that the writ of *Certiorari* is brought to their hands.

This writ of *Certiorari* is euer directed to the Iustices of Peace, and yet (as you haue heard) the *Custos Rotulorum* onely hath the keeping of these Recordes: but the auncient Commissions of the Peace had no *Custos Rotulorum* specially named in them, and then this certifying belonged to them all, which forme the Writ retaineth to this day. And if it fall in question whether such a *Certiorari* were deliuered to the Iustices of Peace, or no, that must be tried (sayth the Booke 10. H. 7. 24.) by the verdit of twelue men.

Now, if a *Certiorari* come to the Iustices of Peace to remoue an Enditement, and the partie sueth not to haue it remoued, but suffereth it to lye still, the Iustices of Peace may proceede notwithstanding the Writ, as Hubbert the Kinges Attourney sayd, 6. H. 7. 16. for otherwise the triall of a Felon, if the Enditement were of Felonie, might bee delayed and deluded also: But yet Keble held opinion against him, and was fearfull that in such a case it might proue felonie to make

execu-

execution after such a writ.

And if a *Certiorari* come to the Iustices of Peace to remoue an Enditement, and in truth the Enditement was not taken till after the date of that *Certiorari*, yet if the Enditement bee remoued thereby, it is good enough, for that they both bee the Queenes Courtes. 1 R. 3. 4.

In the making of a Certificat vppon this *Certiorari*, the Iustices of the Peace ought neither to omitte that which doth auctorize them, nor to exceede that which belongeth vnto them.

For, on the one side, if they certifie an Enditement of Felonie, as taken *coram Iusticiarijs ad pacem*, it is not enough, without saying further, *Nec non ad diuersas felonias, &c.* and otherwise, it is doubtful, whether the Endited shall bee quite dismissed, or no: because the Iustices of Peace haue then no Recorde at all remaining with them, for the Clarke of the Peace maketh an entrie accordingly, & that Record which they sent vp is insufficiēt. And therfore, the Clarke of the Crowne was forbidden to receaue any such Certificat. 12. H. 7. 25.

On the other side, if they certifie one Enditement of felonie not determined, into the Kings Benche, they ought not without warrant

rant to certifie an other Recorde of the acquitall of that Enditee for the same matter: for, nothing ought by them to bee sent thither without warrant, but that which is executorie, and needeth the helpe of that Court. 8. E. 4. 18.

And if a *Certiorari* bee, to send vp the Enditement of A. in which Enditement some others bee endited togither with the same A. yet neede not the Iustice of Peace to make Certificat concerning any but A. 6. E. 4. 5. For although they bee named ioyntly, yet bee they endited seuerally (as I haue sayd before) and the Queene may pardon A. without forgiuing the other. 6. E. 4. 5. Markam.

Finally, it is noted (8. H. 5. 5.) that Hankforde the chiefe Iustice of the Kings Benche, obserued this order, that he which brought thither an Enditement taken before Iustices of the Peace, should endorse his name vpon the backeside of it: which I note, not to teache them of the Kinges Benche, but to let Iustices of the Peace see, that there is some heede to be taken of him by whom they send vp their Enditements.

Of

Of the *Processe* vpon Enditements, and Informations.

Cap. viii.

THe Court beeing thus made prime and possessed of causes, must of duetie proceede to the handeling (or hearing) and tryall of them: the whiche bicause it can not indifferently doe, vnlesse it keepe one eare for the offendour, that he also may be heard in his owne discharge, as others were heard to lay the charge vppon him, the manner is, to awarde Processe against him to come in and to aunswere.

For commonly, an Enditement, or Information (beeing but an accusation, or declaration against a man) is of none other force but to put him to aunsweare.

Processe, whereof it is named.

And thereof all Processe hath the name, bicause it proceedeth or goeth out vpon former matter, either Original, or Iudicial. Howbeit I make difference, whether this Processe bee grounded vpon an Enditemēt, or vpon some other

other information: for they bee not all one, vnlesse it bee (in a fewe Statutes) so specially prouided: Although the Statute (33. H. 8. cap. 10.) did once conioyne and couple them.

Auctoritie to make out processe.

The power of making processe vpon Enditements is giuen by expresse wordes in the ende of the second *Assignauimus* of the Commission: and in other cases (where it is not namely giuen) it is emplyed of congruence (or rather of necessitie) in the wordes, heare and determine, which can not bee performed, vnlesse the partie doe either come in, *gratis*, or bee brought in by processe.

This Processe ought alwaies to bee in the name of the Queene, thus: *Elizabeth Dei gratia, &c. Vicecomiti Kancie, &c.*

Teste, of the Processe.

And the *Teste* thereof may bee vnder the names of any two Iustices, so that it be made sitting the Court in the Sessions. *Commission del Peace*, & Brooke *Tit. Peace.* 6. & 7.

New commissions of Peace, doe not discontinue the old processe.

But now, whereas the Commission giueth to the present Iustices auctoritie to make processe vpon Enditements, taken aswell before former Iustices, as before them selues, al that doing was wont to bee discontinued in Law by the comming out of a newe Commission of the Peace, vntill that the Statute (11. H. 6. ca. 6.) did establish, that no pleas, suits, or processe

ceſſe, to bée taken before Iuſtices of ỳ Peace ſhoulde bée diſcontinued by a newe Commiſsion of the Peace to be made, but that they ſhoulde ſtande in their ſtrength, & that the Iuſtices aſſigned in ỳ ſame newe Cõmiſsion, ſhoulde haue power to continue ỳ ſame, and to heare and determine all that whiche dependeth vpon them. And of the like effect, there is a braunche in the latter ende of the Statute, 1. E. 6. ca. 7.

Furthermore, whereas Shirifes and their Baylifes, vſed to arreſt men, and to proceede vppon Enditementes founde in theyr Turnes or Lawdayes, an other Statute made (1. E. 4. ca. 2.) wringeth that power out of their handes, and deliuereth it ouer to the Iuſtices of the Peace alſo, appoynting them to proceede vpon them, as if they had bene found before themſelues. Enditement before Shirifes.

Nowe, ſéeing that this Proceſſe of the Seſsions is ſent out to this ende, that either ỳ partie ſhall come in to anſwere, and be inſticed by lawe, or elſe that he ſhall for hys contumacie bée depriued of the benefitte of lawe (for ſo muche in effect doe the wordes of the Commiſsion, *Quouſque capiantur, reddant ſe, aut vtlagentur*, impoꝛte in them) it followeth, that in al caſes of Enditements, (if the partie be retourned inſufficient) the Proceſſe of vtlawrie.

Processe of Vtlawrie, lyeth againste the offendor, if he bée not taken before, or doe not otherwise offer and yéelde himselfe.

But a good while after that Commissions of the Peace were first awarded, there was not giuen by them any power to make out anye Processe of Vtlawrie, for I haue séene a Commission of the Peace (20. Ed. 3. *Part 1. Patent. in dorso.*) wherin were wordes auctorizing the Commissioners to arrest all suche as shoulde bée endited before them: but by and by this followeth, *Et ad nomina eorum qui fugerint, & coram vobis sufficiari noluerint, certificandum in Cancellaria &c.* So that if they might not gette them arrested, they coulde goe no further but to certifye theyr names.

The general Processe, vpon Enditements of Trespasse.

The meane to this Utlawrie is not one in all cases: for vpon Enditements of Trespasses against the Peace, or suche other contemptes, the Processe is one: and vpon Enditements of Treason or Felonie, it is another.

Upon Enditements of Trespasse against the Peace, of Conspiracies, and of Routes in presence of the Iustices, or in affraye of the people, if the offendors may not be founde, nor brought in by Attachment, or Distresse, (by reason of their insufficiencie) the Processe

of

Proceſſe of Vtlawrie is to bée awarded, by the Statutes. 18.E.3.Stat.1:&.18.Ed.3.Stat.2. ca.5. The like is againſt ſuche as bée endited vppon the Statute of Liueries. 8. Henrie. 6. cap.4.

And a *Venire facias* firſte, and then (if therevpon he bée retourned ſufficient) a *Diſtringas*, and ſo the ſame Proceſſe infinite til he come in: but if a *Nihil habet. &c.* bée at the firſt returned againſt him, then a *Capias alias, & pluries*, and after an *Exigent*, (as it ſéemeth by Maiſter Marrow, and the olde precedents agréeing with the Cõmon Courſe as I take it,) is the ordinarie Proceſſe vpon al enditements (not ſounding in Felonie or greater offéce) whether they bée of Treſpaſſe againſt the Peace, or of contemptes againſte penall Lawes, vnleſſe it bée otherwiſe ſpecially prouided by thoſe ſame Statutes wherevppon ſuche Enditementes bée altogither grounded: Of which ſorte theſe bée ſome.

Speciall Proceſſe.

The ſtatute (22. H.8.c.5.) cõcerning Bridges in Highwayes, alloweth ſuche Proceſſe as the Iuſtices of the Kings Benche doe vſe, or ſuche as the Iuſtices of the Peace them ſelues ſhal think méete by their Diſcretion, for the ſpédie amendement of thoſe Bridges.

Vpõ Enditemẽts of Liueries, maintenãce, Archerie, vnlawfull games &c. by the Sta-

tute (33. Hen. 8. cap. 10.) there was giuen one *Venire facias*, one *Capias*, and then the *Exigent*: But it is to bee weighed, whether the Statute (37. Henrie 8. cap. 7.) whych vtterlye repealeth that Statute (33. Henrie. 8.) doe transferre the manner of that Processe vnto the auntiente Quarter Sessions, as it doeth sundry other partes of the said Statute.

The Statute of Labourers (23. H. 6. cap. 13.) gaue (after Enditementes grounded therevppon) an Attachement, *Capias*, and *Exigent*: But I thinke it no great doubt but that that pointe is taken awaye by the new Statute of Labourers (5. Elizabeth. cap. 4.) as well as all the residue of that Statute is.

Processe vpon Recognusance.

The Statute 5. E. 6. ca. 25. giueth power to the Iustices of Peace to enquire of Alehouse keepers whether they haue done any acte to the breach of their Recognusãce. And if any such matter be presented, then to awarde Processe against the offendor to shew why he shoulde not forfeite his Recognusaunce: but what this Processe shal be I wil not determine. For I doe not finde that in anye other case, thoughe it appeare that any man hath forfeited any Recognusaunce, that the Iustices of the Peace can awarde anye *Scire facias*,

facias, or other Processe to cal him in vpõ it, but are rather to certifie the same into higher Courtes, that from thence Processe maye issue out, to call the partie to answere thereupon.

Some other Statutes there bee, that haue extended ỹ auctoritie of the Iustices of Peace (in sending Processe) beyonde the bounder of their owne Commission. For, by the Statute (1.E.6.ca.1.) three Iustices of ỹ Peace (the one being of the *Quorum*) maye make Processe against such as be thereupon endited for deprauing the Sacramente, by two Writtes of *Capias*, and the *Exigent*, and by *Capias vt lagatum*, into any place within the Queenes dominions. Processe, into other *Shires*.

So, if a Seruaunt departe into an other Shire, the Iustices of the Peace of that Shire, (where the departure was) maye graunte Writs of *Capias*, to the Shirife of that other Shire, (where the Seruaunt is) returnable before themselues. 5.El.ca.4.

The like may they doe (by the saide Statute (22.H.8.ca.5.) where a decayed Bridge lyeth in one Shire, and the person or landes (chargeable thereto) doe lye in an other Shire.

But if the Enditement bee in one Coũtie, and the Enditee bee named to bee then

or *Nuper* dwelling in an other Countie, & there is a speciall course of Processe in that behalfe for his benefite appointed by the Statute (8.H.6.cap.10.) both for Treson, Felonie, and Trespasse: for (before any *Exigent*, shall bee awarded) one *Capias* must be sente out, and retourned, and then a second *Capias* shall goe (into the Countie where he is supposed in the Enditemente to bee or to haue bene conuersante) retourneable (before the same Iustices of the Peace, before whom the Enditement was taken) three monethes at the least after the date thereof (for al Counties be now holde frō moneth to moneth by 2.Edwarde.6.ca.25.) by which lasse Writte, the Shirife shall be commaunded to take the Enditee, if he maye bee founde within hys Bayliwike, and if not, then to make Proclamation in two Counties (before the return of that Writte,) that the Enditee shall appeare before the sayde Iustices of the sayde Countie (whers the Enditemente was taken) at the day contayned in the last sayde *Capias*, to aunsweare to his offence, at which day if he come not, then the *Exigent* shall bee awarded against hym, and otherwise not.

And by ỹ equitie of this Statute of (8.H.6. ca.10) (saith M.Marr.) if the Enditee be imprisoned in an other Countie, the Iustices of Peace may awarde an *Habeas corpus* to re-

moue him before them.

Superſedeas, to ſtay Proceſſe.

Al this Proceſſe of Utlawrie may be ſtaid by a *Superſedeas* And Fitz. in his Nat. Br. (Fo. 237.) hath the caſe, that if an *Exigent* goe out vpon an Enditement of Treſpaſſe found before Iuſtices of the Peace, the partie maye finde ſuerties in the Chauncerie (bodie for bodie) to appeare at the day of the Writ, and may then alſo haue a *Superſedeas* from thẽce to ỹ Shirife, cõmaunding him to forbeare to take him, & to let him go if he haue then alreadie taken him for ỹ cauſe. And again you may ſée in the new booke of Entrees (Fo. 546) ỹ Proceſſe vpon ſuch an Enditement ſtaied by a *Superſedeas* iſſuing frõ one Iuſtice of the Peace alone, & teſtifying ỹ the partie came before him & found ſuerties *de ſine aſſidendo*. But, as I beléeue ỹ former, ſo will I not perſwade ỹ practize of ỹ latter, bicauſe I thinke it not in ỹ lawful power of anye one Iuſtice of ỹ Peace, to award any ſuch warrant, but it muſt be done by two Iuſtices at the leaſt.

Proceſſe vpon Enditements of Treaſon, and Felonies, &c.

I haue yet to ſpeake of Proceſſe vpõ Enditements of Treaſon and Felonies, wherein I will bée ſhort, that I may paſſe ouer to other things.

The Proces vpõ an enditemẽt of Treaſon, forcounterfayting mony, is by *Capias* only, & ſo ſet forth, 3. H. 5. ca. 7. neither is there any

other Treason wherevpon the Iustices of the Peace may awarde Processe.

It seemeth by M. Marrowe, that the Processe at the common Lawe vppon Enditements of felonie was but one *Capias*, & then the *Exigent*: But the old Precedents (grounding themselues vpon the Statute (25. E. 3. c. 14.) doe vse the mention of two Writtes of *Capias* before the *Exigent*. For that Statute prouideth, that after retourne of *Non est inuentus* vpon the first *Capias*, an other *Capias* shal be incontinently awarded, wherby the Shirife shall be commaunded to seise ỳ cattailes of the Enditee, and safely to keepe thē till the day of the *Capias* retourned: and if he then also returne *Non est inuentus*, & the Enditee commeth not in, the *Exigent* shal bee awarded, and the Cattailes shal be forfeited: But if hee come & yeelde him, or be taken before the returne of ỳ second *Capias*, the goods and Cattels shal be saued vnto him.

Processe into Forreine shires.

And here the Iustices of peace haue power to send into a Forraine Coũtie: for, whereas by ỳ cõmon Law no mã could be Attached, vpõ an Enditement or vtlawrie of Felony, but only in ỳ Countie wherein he was Endited, or outlawed, wherby many euil men were much incouraged, ỳ Statute (5. E. 3. ca. 11.) did take order, that Iustices assigned to

heare

heare and determine Felonies) might direct their Writtes to any Countie in *Englande*, to take suche Enditees, whether soeuer they had remoued themselues.

And on the other side, if the Inditement be found in one Countie, and the Enditee is therein named to be then dwelling in another Countie: I haue tolde you already (in this Chapter) for the benefit of the Enditee, what Processe belongeth to it, and therefore I will in hande with Processe vpon Informations.

The power of making Processe vppon Informations, proceadeth from speciall Statutes, & may not therefore varie from their direction, although they varie one from an other. Processe vpon Informations.

For vpon an Information, giuen for the Queene before Iustices of the Peace, vppon the Statute of Liueries (made 8.E.4.cap.2.) they shall awarde suche Processe, as is made vpon an Originall Writte of Trespasse done against the Queenes Peace, because the Information it selfe is (by force of that Statute) in steade of an Originall Writte. Liueries.

And vpon Information made vnto them, that an Alehouse keeper hathe done any acte wherby he hath forfaited his Recognusance, they may awarde Processe against him, to

shew why he should not forfeite his Recognusance, by the Statute 5. E.6.ca 25. as hath bene saide: But learne if that be meant of a *Scire facias*, or of some other Proceste.

Of Hearing, vpon Confession.

Cap. ix.

THe partie being thus brought in, (or otherwise yelding himselfe) to answeare, Iustice requyreth, that he be heard to speak: and therefore, his may (as his cas wil serue) either confesse or deny the offence wherewith he is burdened.

Free confession.

And this Confession is of two sortes, Free, or Forced: and that former is of two kindes also, absolute, or after a manner.

In the open (or absolute) Confession, hee taketh the faulte vppon him, and yeeldeth himself

himselfe simply to suche paine as the Court will inflict for it.

And this free Confession is of great force in Lawe: for, if it be vpon an Enditement of Batterie, and (after such confession had for the Queen) the partie beaten wil also bring his Action of Trespas for his owne damage, then shal the defendant be concluded by his confession vpon the Enditement, so that he shall not bee receiued to say the contrarie. 9. H.4.8: & 11.H.4.65.

But the other, (which I call Confession after a manner) is onely a not denying, in which the partie doth cunningly, and (after a sorte) take the fault vppon him, without confessing hym selfe guiltie thereof: as where he putteth hym selfe in *Gratiam Regine* wythout anye more, or by Protestation that hee is not guiltie, pleadeth his pardon: And such a Confession (if I maye so call it) doth not so conclude hym, but that he maye afterwarde pleade Not guiltie in anye Action brought against him 9.H.6.60. *Cur.* & 11.H.4.65.

The forced Confession, whereof I spake, is that which the Iustices do wring out of ỹ partie by the Examinatiõ of him, in such cases wherein it is permitted. But because I intends

Forced Confession.

intend to speake of Examination, by it selfe, I will reserue this till I come to that.

Of hearing, by Discretion.

Cap. x.

WHether the offender, shall freely confesse the faulte, or finely yelde hym selfe to Grace, or pleade hys pardon without confessing it, yet then is that matter fullye heard, and the Court made readie to determine of it. But if he shall deny the fact, then muste some other course of Hearing (or triall) be taken for it. And that is in some cases, by Discretion of the Iustices: in some other cases by Examination of the parties or witnesses, and in some other cases by Certificat of other men, but in moste cases by Trauerse or Araignement, bothe which laste trialles are perfourmed by the verdite of twelue. For Iustices of the Peace, can not

(vpon

(vpon an Inditement of Mayheme) make the Triall by their own view, or inspection, as the Iustices of ỹ Kings Bench may, saith Marr.

The Statute (11.H.7.cap.3.) pretending, that offences committed againste the Statutes of Riotes, Retainers, Maintenaunces, Embraceries, Extortions, Vnlawful games, and such like misdemeanours, were neither accordingly punished before Iustices of the Peace, by reason of the greate corruption, and fauoure of the Enquestes, sworne and charged therevppon to enquire before them, nor coulde be otherwise conueniently corrected by order of Law, vnlesse they were founde and presented by twelue men thereto duely sworne, did enact, that from thencefoorth Iustices of the Peace, vpon information made (for the King) before them, should haue ful power by their Discretion, to heare and determine all offences and contempts againste many penall lawes, then in force, & not repealed.

But (as one saide) *Ex bonis legibus, mala exempla*: So, the Parliament (1. H.8.cap.1.) complayned, that manye men were deceitfully entrapped, and wrongfully condemned thereby, and therefore it resumed that power: yea, and the King withall chopped

off

off the heads of some that had filled hys fathers purse by the execution of that & some other penall Statutes.

So that now againe the Triall of offences ought (for the moste parte) to proceede eyther after the generall order of the common Lawe, or vpon suche speciall examination or other prowfe, as some Statutes doe giue in speciall cases: and this hearing at libertie and discretion, hath seldome anye place.

But wherſoeuer it is permitted, that counsell which M. Bracton (*lib.* 1.) giueth, is to be hearkened vnto: In Iudiciall hearing of a fault (saith he) besides the bodie of the facte it selfe, these seauen circumstances are to be weyghed, namely, the cause, the person, the time, the place, the quantitie, the qualitie, and the euent.

And for prowfe, that hearing by discretion, is yet in some sorte suffered, take thys for example.

The Iustices of Peace may heare by their discreation, as well by Examination, as otherwise, at the suite of the King, or of the partie, the offences done againſte the Statute prouided for the true making of Tile. 17. E. 4. cap. 4.

But

But howe farre this discreation, and the worde Otherwise maye bee extended in thys, and suche like cases, it can not wel bee foretolde, for it is referred to them, and they muste take counsell *extra, & extempore*, for it.

Of Hearing (or *Triall*) vpon *Examination*.

Cap. xi.



The obstinacie of euil doers that woulde shewe no conscience in acknowleging of their faultes, and the corruption of Iurors that would presente nothing, that lay onlie in their owne knowledges, hath begotten and brought into our Lawe thys triall by Examination, wherewith it was not before acquainted.

And yet thys manner of Triall is not lawly permitted to Iustices of the Peace, but

but in cases onelie, where, eyther the Statutes doe generally referre the trial to their Discretions, or else doe specially auctorize them to take the Examinations.

The Examination then, is sometimes of the offendours them selues, sometimes of Witnesses that can speake to the matter, and sometimes both of the parties and witnesses: of euerie of which I wil giue you an auctoritie, or twaine, and leaue the reste to your owne reading and examination.

Liueries. Upon apparance (after Processe) against the offendors of these Statutes of Liueries, the Justices of Peace may examine them, and therevpon conuince them so, as if they were thereof conuict by Enquest, 8.H.6.cap. 4: & 8.E.4.cap.2.

Deere hayes &c. They may also call before them, and examine, all such as shall be suspected to kepe Deere hayes, or Buckstalles, or that vse to stalke or to take yong Herons against this Statute, and maye (finding them faultie) committe them to prison, till they find Sureties to pay the forfeiture 19.H.7.ca.11.

And because it is often seene, that those which haue committed an offence, will also increase their faulte by denying of the same, therefore some Statutes (as I saide) do appoint, that the Iustices of Peace shall take the

the examination of others, besides the offendors themselues.

And therevpon, the vsers of false prinie tokens, or of counterfaite Letters, may bee tried out by the examination of Witnesses, 33. H. 8. cap. 1 False tokēs.

And the vnlawfull takers of Hawkes egs, or Swans egs, may be detected and cōuinced by information, and such prowfs, 11. H. 7. ca. 17. Hawkes eggs.

Now, whereas some Statutes doe enable the Iustices of Peace to heare and determine, by the generall vse of the word Examination, without shewing of what persōs: it seemeth to me, that they may therupon examine as wel ỹ parties, as other witnesses.

Such a one is the Statute prouided for ỹ true making of Tiles, 17. E. 4. cap. 4: Such an other is the Statute made for the examination of offences done by Coroners 1. H. 8. ca. 7: And such an other also, is the Statute ordained for the examination of putting into Forests, or Wastes, any stoned Horses being vnder the height of fifténe handfulles. 32. H. 8. cap. 13. Tiles. Coroners. Stoned Horses.

Thus farre of Examinations: which whether they ought to be takē vpon oath, or no, you maye coniecture by that whiche I haue alreadie sayde thereof in the firste Booke:

and yet (for more aide towardes your resolution) I saye nowe that these Examinations ought (in my slender iudgement) to be vpon Oathe, because the triall here dependeth vppon them, whereas those others are but to enforme the Iurie towardes an Enditement onelie, in so muche as the parties are bounde to giue the matter of them in euidence *Viua voce*, when the Triall shall bee.

Of Triall (or Hearing) by *Certificat*.

Cap. xii.

Before some other Iudges, the Lawe hath allowed Trial by sundrie sortes of Certificat: as from the Quenes Lieuetenaunt, in the case of Escuage: from the Bishop, in the cases of Bastardie, Bygamie, Excommunication, &c. and in some other cases from other men: But, before Iustices of the Peace, I haue

haue not hitherto founde anye triall by Certificat appointed by Statute, but in this one case following.

If any man (being impeached vpon this Statute of Armour. for not hauing his appointed furniture, shall alledge, that the same furniture so lacking, coulde not bée conueniently prouided; for wãt of the same wythin the Realme, this shall be taken for a good answeare (in case it be true) but if it be denyed or trauersed, issue shall be ioyned vpon it, and the Triall shall be onelie by Certificat to be made by the L. Chauncelor, L. Treasourer, L. President of the Counsell, L. Steward of the Queenes house, L. Priuie Seale, L. Admirall, and L. Chamberlaine of the saide houshold, or by thrée of them, in writing vnder their Seales. 4. & 5. Phil. & Mar. cap. 2. Armour.

For, the Certificat of the offence, and of the Recognusance taken by two Justices of the Peace, one being of the *Quorum* of hym that hath obstinately kepte a common Alehouse againste the Statute 5. E. 6. cap. 25. is made a sufficient conuiction of the same offence, wythout further Triall. Alehouse keeper.

Of Hearing (or *Triall*) by Trauerse.

Cap. xiii.



The moste solemne, & auntient Triall of the fact, against an offendor that wil not confesse it, is that which we see perfourmed by the verdite of twelue good and lawful men of the Countrie: and it also doth best content and quiet the guiltie man, for that it passeth by hys owne Countrymen, Neighbours, and Peeres, according to the auntient libertie of the Lande, whereunto euery free borne man thinketh him selfe inheritable: and thereuppon it is named (Mag. Cart. cap. 29.) *Legale iudicium parium suorum*, the lawfull iudgement of a mans owne Peeres, or Equalles, because, as the Nobilitie, so also the Comminalty are to be tried, in treason, felonie, or misprision of treason, not the one by the other, but each by men of their owne estate and calling. I meane by the worde Nobi-

Nobilitie, as our own Law speaketh (which calleth none Noble vnder the degree of a Baron) and not as men of forraine Countries doe vse to speake, wyth whome euerie man of Gentile birth is accompted Noble: for wee dayly see, that bothe Gentlemen and Knights doe serue in the Parliament as members of the Comminaltie. Howbeit, in cases of forcible Entrie, Riot, Rout, vnlawful Assemblie, or such like, they of the Nobilitie shal be tried by twelue men, as well as other inferiour subiectes. 3. & 4. Phil. & Mar. reported by Dalizon.

Thys Triall happeneth before Iustices of the Peace, sometimes vppon Trauerse, and sometimes vpon Arraignment.

But yet, some things be commune to them both: For, if the partie charged will Demurre in Lawe vppon the euidence, the Iustices ought to recorde his Demurrer: So if he wil pleade in Iustification any matter of Recorde that is before other Iustices, they ought to giue him day to bring it in. Marr. So also if the Iustices (thinking an Enditement to be voide) haue discharged the prisoner (paying his fees) yet, vppon chaunge of their opinion, they may stay him againe, at any time before Iudgement. Fitzh. Endite. 27.

But if he pleade a Pardon before them, in which certaine persons be excepted, and the Queenes Attourney is not present to ioine issue, that he which pleadeth it is one of those that be excepted, then they themselues maye supply the office of the Attourney, in that behalfe. 8.E.4.7. wherevpon also I gather this generall learning, that they ought not to suffer the Queene to be disaduauntaged, where it lyeth lawfully in their power to preuent it.

And if an Inditement be challenged for suche cause as these Iustices will not allow, then may they seale a Bill, of that exception for the partie, if he will write and require it according to the Statute W.2.ca.30. as M. Marr. writeth.

Trauerse. The Trauerse take name of the French, de Trauers, which is no more than *de transuerso*, in Latine, signifying, on the other side: because, as the Enditement on the one side chargeth the partie, so he on the other side commeth in to discharge him selfe. For, whereas the Arraignement proceedeth vppon hym that is vnwillinglye brought in by Processe, the Trauerse is (for the moste parte) freely tendred by the partie.

To Trauerse an Enditement then, is to take

take issue vppon the chiefe matter thereof, whiche is none other to saye, than to make contradiction, or to denye the point of the Enditement. As in a presentment againste one for beating the seruant of A. the partie may come in, and may chuse to saye, that he did not beate him, (which is to trauerse the matter) or that he is not the seruant of A. (which is to trauerse the cause) but hée cannot saye, that A. loste not hys seruice: for thereby the batterie is confessed, and then of necessitie it followeth, that hée is a Trespasser, 31.H.6.12: & Brooke Tit. Trauerse 182.

And this libertie of Trauerse is commonly restrained to Enditements of Trespasses, Contempts, Riotes, and other inferiour offences, wythin the Commission, or Statutes, authorizing the Iustices of Peace: and is not vsually extended to Treasons, or Felonies, as you shall hereafter sée.

Trauerse, before Iustices of the Peace.

M. Brooke noteth, that it is not muche vsed to Trauerse Enditements before Iustices of the Peace, but rather to remoue them into the Kings Bench, and to Trauerse them there. Howbeit commune experience at this daye can shewe manye Trauerses béefore Iustices of the Peace also.

And there is no doubte, but that as

Iustices of the Peace haue power to awarde Processe, and the parties also haue libertie to speake for them selues: So (hauing spoken) the Iustices may Heare and Determine of their speach, whether it touch them in freeholde, or otherwise.

For although it be holden (2.R.3.cap.11: 19. H.8.11: & Fitzh. Tit. Ass. 442. and in other bookes) that a man shall not be receiued to trauerse a Presentment, vnlesse it do charge his freeholde: yet Hussey and Fairefax saide (5.H.7.4.) that a Presentment (not concerning freeholde) whiche is founde before Iustices of the Peace, may be trauersed: and whether they meante it of a Trauerse in the Kings Bench, or before Iustices of the Peace, it maketh no difference, because the reason is all one, that is, if Processe be awarded, the partie maye come in, and offer his Trauerse, and otherwise the Processe should be in vaine.

Hereunto agreeth Moubray (41.Ed.3.26.) saying further, that in a Leete suche a Presentment is not Trauersable, because out of a Leete no Processe can be awarded vppon it. And this peraduenture is the reason of the booke (8.E.4.ca.5.) and of M.Mar. where they say that a Presentment of bloudshead found in the Shirifes Turne, and sent (as it ought

ought to be) to the Iustices of Peace, cannot be trauersed before them, as whereupon they can neyther make Processe, nor discharge the partie by waye of Plea.

So that this seemeth a generall learning, that whersoeuer any Processe *ad respondendum* goeth out vpon suche an Enditemente as is trauersable, there the partie may offer, and ought to haue his Trauerse.

But Marrowe sayeth, that if a man bée of an Enquest that Endited him of Trespasse, or suche like (so that vpon the matter, he endited hymselfe) thys is so strong, that hée shall neuer bée receyued to Trauerse it.

It is not my meaning to pester this latter Booke with Precedents: But yet for as much as in ỳ Recorde of one Trauerse, there is at once discouered the Stile of the Sessions, the Enditement, the Processe to aunsweare, the Trauerse it selfe, the Verdite, and Iudgement therevpon, the Processe of execution, the yéelding of the parties, and the assesmẽt of their fines, so that it alone maye serue in steade of all, I trust it shall not bée troublesome to insert it.

A Lias, scilicet ad Sessionem pacis, tentam apud Bridgewater *in comitatu praedicto, die Martis* Somers. *Stile* of the *Sessions.*

tis proxime ante festū Sancti Mathei Apostoli anno regni Dom. vestra Elizabethæ dei gratia Angliæ, Frãciæ, & Hiberniæ Regina, fidei defensoris &c. vicesimo, Coram Iohanne Stowell milite, Humfrido Walron vno magistrorum Curiæ Cancellariæ dictæ D. Reginæ, & alijs socijs suis Iusticiarijs dictæ Domine Reginæ ad pacem in comitatu prædicto conseruandam, Necnon ad diuersas felonias, trangressiones & alia malefacta in eodẽ comitatu perpetrata audienda & terminanda assignatis, per sacramentum. xij. Iuratorum extitit præsentatum, quòd Iohannes Long, de &c. R. M. de &c. Et T. L. de &c. cum diuersis alijs ignotis malefactoribus, & pacis dictæ Dom. Reginæ perturbatoribus, modo guerrino arraiati, vniti, & assemblati, vicesimo die Iulij in nocte eiusdem diei, anno. &c. Vi & armis (viz.) Baculis, gladijs, clipeis, pugionibus, falcastris, & alijs armis, tam innasiuis, quàm defensiuis, apud C. &c. clausum cuiusdam Willi. Willet (vocatum B.) illicitè, riotosè, & routosè, fregerunt, & intrauerũt, & octo plaustra fœni ad valenciam &c. adtunc & ibidem existentia, de bonis & catallis dicti Willi. Willet adtunc & ibidem iniustè & illicitè ceperunt & asportauerunt, contra pacem dictæ Domine Reginæ &c. Et contra formam Statuti inde editi & prouisi. Per quod præceptum fuit vicecomiti quod non omitteret &c. quin venire faceret eos ad respondendum &c. postea q̃

Enditement.

Processe to appeare.

scili-

scilicet predicto die Martis proxime ante festum Sancti Mathei Apostoli an. vicesimo supradicto, coram prefatis Iusticiarijs venerunt predicti I.L.R.M. *&* T.L. *in propriis personis suis, & habito auditu Indictamenti predicti, seperatim dicunt, quod ipsi non sunt inde culpabiles, Et de hoc ponunt se super patriam: Et* Adam Martin *qui pro Domina Regina in hac parte sequitur, similiter &c: Ideo veniat inde Iurata coram Iusticiarijs dicte Domine Regine ad pacem in comitatu predicto conseruandam assignatis &c. ad Sessionẽ pacis apud* Welles *&c. die Martis proxime post Epiphaniam Domini tunc proxime futuro tenendam. Et qui &c. Ad recognit &c. Quia tam &c. Idem dies datus est tam prefato* Adam Martin *qui sequitur &c. quam prefatis* I.L.R.M. *&* T.L. *&c. Ad quas quidem Sessiones pacis, tentas apud* W. *predict. in comitatu predicto die &c. Coram Domino* T.P. G.N. *&* H.P. *milit. & socijs suis Iusticarijs dicte D. Reg. ad pacem in comitatu predicto conseruandam, Necnon ad diuersas felonias, trãsgressiones, & alia malefacta in eodem comitatu perpetrata audienda & terminanda assignatis, venerunt tam prefatus* A. Martin *qui sequitur &c. quam prefati* I. L. R. M. *&* T. L. *in propriis personis suis, Et Iuratores predicti, per vicecomitem Comitatus predicti ad hoc impanellati, & exacti, (viz.)* Ia-

Trauerse.

Iurie.

Day giuen.

Iacobus F. Gen. I. G. &c. similiter venerunt, qui ad veritatem de premissis dicendam triati & iurati dicunt super Sacramentum suum, quod predicti I. L. R. M. & T. L culpabiles sunt, & eorum quilibet culpabilis est, de transgressione, contemptu, & riotto predictis in Indictamento predicto superius specificatis, modo & forma prout superius versus eos supponitur: Ideo concessū est p curiam, quod predicti I. L. R. M. & T. L. capiantur ad satisfaciendum dicte D. Reg. de finibus suis occasione transgressionis, contemptus, & riotti predictis. Qui quidem I. L. R. M. & T. L. adtunc & ibidem presentes ibidem in Curia petierunt se ad finem cum dicta Domina Regina occasione predicta admitti: Et inde ponunt se seperatim in misericordiam Do. Re: Et assessatur finis eiusdem I. L. per Iusticiarios predictos, ad 3. lb. 6. s. 8. d: Et finis eiusdem R. M. Assessatur ad xx. s. Et assessatur finis eiusdem T. L. ad quinque libras, bone & legalis monete Anglie, ad opus & vsum dicte Domine Regine.

Verdite.

Iudgement.

Capias pro fine.

Ponunt se in misericordiam Regine.

Fine assessed.

Enditement voide.

And this is to bee noted, that this Recorde was afterward remoued into ỹ Kings Bēch, and that the partie was dismissed there, for want of those wordes in the Enditemente that you see vnderlined in other letters in certaine partes of the same.

Of

Of *Triall* vppon *Arraignement*, and therewithall of *Felonies*.

Cap. xiiii.

Arraignemente & Trauerse, doe not so much differ in the nature (or substaunce) of the Triall it selfe, as in the order, or vsage of the same. For, as there is no Enditement, Trauersable by the partie, but that he may also bee arraigned vpon it: So likewise is there no Enditement, whereupon the partie may be arraigned, but that he may also (if he wil) tender his Trauerse vnto it.

Differenee, betweene Trauerse, and arraignment.

The difference then stãdeth in this, ỹ cõmõly he (which is to be arraigned) commeth in by compulsion of bonde, or Processe, and is touched with matter concerning life and death, or some suche heynous offence, and pleadeth generallye Not Guiltie tõ the Enditement.

Common-

Commonlye I saye, bycause althoughe hée come in freelye, or bée endited of some inferiour offence, yet hée maye bée neuertheleſſe arraigned: neyther is hée of neceſſitie driuen to pleade Not Guiltie (whiche runneth to the facte) but maye (if the caſe wyll ſuffer) pleade a Iuſtification or matter in Lawe, thoughe it bée in caſe of Felonie.

It ſéemeth to haue borrowed the name out of the worde Arraye, whych is the pannell, or Iurie, bycauſe he that is arraigned, muſt bée tryed by them, béeing firſt called, ſworne, and tryed, in order for that ſeruice.

If I ſhoulde rippe vp and proſecute the whole learning that belongeth to arraignement, I ſhoulde but *Actum agere*, and yet not doe it halfe ſo well as you maye elſewhere finde it: and therefore, referring you wholie for that matter to the learned labour of Iuſtice Stanforde, I will only offer to conſideration, a point or twaine, whereof it ſpeciallye behoueth the Iuſtices of Peace to be aduertiſed, and then paſſe ouer to determining.

Felonies not triable before *Iuſtices* of the Peace

The firſte thing is, that there be ſundrye Felonies, and ſome Enditementes of

Felonies,

Felonies, the (which as it ſeemeth to mée) Iuſtices of the Peace can not heare, or trie at all: the ſeconde, that in the handling of the verie Felonies wherewith they maye deale, there be yet certaine conſiderations peculiar to the Iuſtices of the Peace only, and not common to them with other Iudges ouer Felonies.

Iuſtices of the Peace, can not heare the triall of the Felonie for vſing Witchcrafte, or Sorcerie, wherby any man is hurt in bodye or gwdes: bycauſe it is made Felonie by the Statute (5. Elizabeth. cap. 16.) after a formér conuiction onely, the power whereof is not committed to the Iuſtices of Peace, and ſo they can take no knowledge of the Recorde therof, not being before them ſelues.

Of the ſame ſorte is that Felonye for Forgerie by the Statute (5. Elizabeth. cap. 14.) after conuiction for a formér offence: and that Felonie (after a formér conuiction alſo) for ſlaunderous ſpeache againſte the Queenes Maieſtie, in offence of the Statute made 23. Eliz. cap. 2.

Neyther doth the hearing and tryall of that felonie of a ſeruant (taking the gwds of his

his maister (after hys death) belong to the Iustices of Peace in the Countrie, bycause they can not take notice of his defaulte in the Kings Benche, by whych default it firste beginneth to bée felonie, by the Statute (33. H.6 ca.1.)

The like, thoughe for vnlike reason, is to bée sayde, of the Felonious embeseling of anye the Recordes of the Courtes at *Westminster*, agaynste the Statute 8. Henrie. 6 cap. 12. And of an Accessorie in one Countie, where the Felonie was done in an other Countie, vppon the Statute 2.&.3.Edwarde.6. cap. 24. bycause the iurisdiction ouer these Felonies, is not committed to the Iustices of Peace, but remitted to other Iudges, by the verye same Statutes.

Furthermore, they can not make Triall of suche as were endited of Felonie before the Coroners, or, before the Iustices of Gaole deliuerie, or of Oyer and Terminer, if the same persons bée not Iustices of Peace also in the same Shire, so as the Enditements bée vnderstode to be taken before thē as before Iustices of the Peace, for their Cōmission and auctoritie extēdeth only to such as stande endited, before themselues, or former Iustices of the Peace, or the Shirife in his

his Turne.

Thus farre of the first point: Touching the second, it seemeth, by Marr. (and M. Fitzh. Fol. 16.) that albeit two Iustices of ỳ Peace, (the one of them being of the *Quorum*) may heare and try Felonies, yet no Iustices of the Peace haue auctoritie to deliuer Felons, by proclamation, or without sufficient acquital: nor yet to deliuer such as bee in prison for suspition of Felonie: For they must procéede by enquiring, hearing, & determining, as their Commission appointeth them, and not ridde the Gaole otherwise as the Iustices of Gaole deliuerie may doe. And therfore, such persons if they can not bee endited, must either remaine the comming of the Iustices of Gaole deliuerie, as the commune manner now is, or els (being remoued into the Kings Bench) they may bee deliuered vpon the writ *de gestu & fama*, as the olde order was, or otherwise as the manner is at this day.

Things seuerall to Iustices of the Peace, in the triall of Felonies.

These Iustices can take no appeale of any approuour, nor other before them, say all the Iustices of the Common Place. 2. H. 4. 19. and so is it clearly holden. 9. H. 4. 1. because their Commission stretcheth not so farre. Whereupon (hauing had no leysure to make the searche) I am induced to suspect that the forme of those Commissions was in the last

Assignauimus other than these of our time bée in that point: which (as I haue sayd before) bée now very large, and do giue a great shew to the contrary. But howsoeuer that bée, yet it seémeth no lesse reasonable, than seruiceable, that if one Felon will accuse an other before them, they may take his confession & reprye him, and therevpon cause the other to bée enquired of, & then proceede against him.

Further, they can not arraigne one vpon his abiuration sayth Mar.

It hath also béene thought vnméete, that they should try a Felon ỳ same day in which they awarded the *venire facias* against the Iurie. 22. E. 4. Fitz. *Tit. Coro.* 44. but that hath no necessitie, & the law is now otherwise taken.

Marrow sayth, that they can not award the writ, *venire facias tot matronas*, to try whether a woman (arraigned before them) bée with childe or no: but séeing it standeth with law and reason, to staye hir for the tyme, that the childe may bée preserued, I can not but doubt of it.

They may giue Cleargie to a Felon, if the Ordinarie, or his Deputie, bée present to take him: but if they bée absent, he must bée reprieued, bicause (as Marrow sayth) these Iusticces can set no fyne vppon the Ordinarie for his ablence, no more than if he will accept one

one to reade as a Clarke, where in truth he can not. But if you reade M. Stanford (lib. 2. ca. 45.) he will perſwade you, that the Ordinarie is not the Iudge, but a Miniſter in the triall of Cleargie, and that Cleargie may lawfully bée giuen & allowed in his abſence.

Of ỹ Fine for his default at theſe Seſsions I am doubtfull, as I haue ſayd before: but touching the allowance of Cleargie to the offendor, I ſée no cauſe at all, why it may not belong to the Iuſtices of Peace, as well as to other Iudges, ſéeing that they bée Iudges of the felonie, as other Iuſtices are, & otherwiſe all men might bée defeated of that priuiledge.

Marrow ſayth alſo, that if Bygamie (that vngodly Popiſh counterplea) had bene alleadged againſt one that prayed his Cleargie, the Iuſtices of Peace could not haue written to the Ordinarie to certifie the ſame. But let that paſſe, as now not worth the debating.

And if a man outlawed of Felonie by Proceſſe before the Iuſtices of Peace, bée brought before them, and do alleadge that he was (at the time of the Vtlawrie pronounced) out of the Realme in the Queenes ſeruice, vnder ſuch a Captaine, or that he was then empriſoned in an other Countie, they can neyther write to the Captaine, nor

into the Countie, by the opinion of Marrow. Which if it bee so, it shall bee good to learne further, what they ought to doe with the prisoner in such a case.

Thus much onely, of things restrayning the Iustices of Peace in the Trial of felonies, wherein also they are not now adaies much occupied, the rather bicause they deferre it til the comming of the Iustices of Assise, by reason that the Statuts (1. & 2. Phil. & Mar. ca. 13: & 2. & 3. Phil. & Mar. ca. 10.) doe enioyne them, to Certifie at the next generall Gaole deliuerie, both the examinations and bonds that they shal take, concerning Felons and suspects brought before them.

This I may adde (not as a restreint, but for an enlargement of the auctoritie of Iustices of the Peace) that if they see cause, and do write to the Clarke of the Crowne of the Kings Benche, for the names of any persons being otherwhere attainted of Felonie by Vtlawrie, or being Clarkes conuict or attainted, he ought without delay and vnder the paine of xl. ℔. to certifie the same vnto them, togither with the causes of such attainder or conuiction. 34. H. 8. ca. 14.

Of

Of Iudgement.

CAP. XV.

THe Iustices of Peace, hauing thus sifted and tried ẏ causes in hearing, either by the euidence giuen to the Iurie, or by the examination of witnesses, or by Certificat allowed, or other reasonable and discrete prowfe, are now come to make an ende, and to determine of it. For I may wel apply that to hearing and determining, which M. Bracton requireth to the making vp of a true Iudgement, that is to say, an equall and indifferent acceptation of the persons: an earnest examination and thorow searche of the cause: a true deliuerie of the sentence: and a diligent execution of the same. Of these, the two first belong to Hearing (or Triall) which we haue already handeled: and the latter two bee the very parts of determining, wherwith we haue now to deale. For Iudgement and Execution, doe make an ende of the whole cause.

You haue heard before, how M. Fitzh. collecteth a generall learning out of one speciall case in the Commission, I meane, that if any difficultie doe arise in determination vppon Tryall, the Iustices of Peace are restreyned to proceede to Iudgement: and you may reade (6. H. 7 16.) that if a *Certiorari* bee brought to the Iustices of Peace, they are stayed (by the opinion of Keble) from determination, although the Recorde bee not thereby remoued from them.

But supposing that there is none impediment, let them proceede to Iudgement.

Iudgements by discretion.

The Iudgements of the Iustices of Peace, bee in some cases arbitrarie (or referred to discretion) and in other some cases prescribed or limited Of the first sort, take this one or two for all.

He that is orderly conuicted before them in their generall Sessions, of the deceiptfull getting of anye thing into his handes by meanes of any false token or counterfaite letter made in the name of any other, may bee adiudged by them to suffer Emprisonment, standing on the Pillorie, or anye other corporall payne that they shall appoynt, except the paynes of deathe. 33. H. 8. cap. 1.

And that Seruant, Workeman, or Labourer

bourer, that shall so wilfully and maliciously make assault or affray vppon his Maister or Maistresse, or other that then shall haue charge ouer him, that he shall deserue further punishment than the imprisonment of one whole yeare, may be put to such further open punishment (so as it extende not to life nor limme) as the Iustices of Peace in open Sessions shall thinke conuenient. 5. Eliz. cap. 4.

Their prescribed Iudgements bee of sundry formes, according to the seuerall natures of the offences (whereof they haue to iudge) which bee diuers also. Prescribed Iudgements.

For vpon Murders, and other Felonies, they must pronounce the vsuall Iudgement of Felonie: vpon such as bee conuicted of Trespasses, Contempts, Riots, and such other offences, whereupon no certaine forfaiture is layed by Statutes, they must adiudge, that they bee taken and raunsomed, and so to satisfie the Queene for their offences, by making their fynes: and vppon offendours against such penall lawes, as doe inflict any certayne payne, they ought to adiudge as the Statutes them selues doe direct their course.

For, vpon conuiction of the first offence, against the Statut of forstalling (5. E. 6. ca. 14.) Forstalling.

they must awarde imprisonment for two monethes without Baile or Mainprise, and the forfaiture of the value of the goods so had: vpon the second attainder (or conuiction) such imprisonment for six monethes, & the double value of the goods: and vpon conuiction of the thirde offence, they must giue sentence that the offender bee set on the pillorie, and to forfaite all his goods, and further to haue imprisonment of his bodie during the Queenes pleasure.

Conuey sheepe.

Against him that shall bring, or procure to bee brought, into any shippe, any kinde of sheepe, being aliue, to bee conueyed out of any the Queenes dominions, they ought (for the first offence) to adiudge, that he shall lose all his goods to the Queene, and suffer imprisonment by the space of one whole yeare without Baile or Mainprise, & that at the yeares ende he shall (in the ful market of some market towne) haue his left hand striken off and nayled vppon the openest place of such market. 8. El. ca. 3.

Taking of Deere, or Hawkes, &c.

Against him, that is conuicted for the vnlawfull taking, or sleaing, of any Deere, or for such taking of any Hawke, or egges of Hawke (contrary to the Statute 5. El. ca. 21.) they must adiudge treble damages to the partie grieued, three monethes imprisonment of

of the bodie of the offendour, and (after that expired) to finde suerties of his good behauiour for seuen yeares after, or else to remaine in prison vntill he shall finde suche suerties during those seuen yeares.

And vpon Certificat made at ỹ next quarter Sessions of the Peace, by two Iustices of the Peace (the one of them being of the *Quorum*) against him that shall obstinately kéepe an Alehouse, contrarie to the Statute (5.E.6. ca.25.) the Iustices of the Peace ought (in the open Sessions) to assesse the fine of twentie shillings: the which I do purposely rehearse, because they are there warranted to Assesse the fine, without processe first made against the offendour, vnlike to the common order of assessing fines, as you shall sée when I come to that matter. Alehouse.

It were more laboursome, than profitable, to runne ouer the diuerse Iudgementes that Statutes doe appoint, and it may suffise in this place to haue giuen this taste of these few, and therefore I will in hand with Execution.

Of the *Proceſſe* for the Fine of the *Queene*, and of the aſſeſsing thereof: and of *Eſtreating* for the *Queene*.

Cap. xvi.

Seeing that Execution is but a performance of the Iudgement, I ſhall not neede to make long enumeration of the ſortes of Executions, which are within the power of the Iuſtices of Peace. For, beſides that by the knowledge of the one, the other is knowen alſo, the Iuſtices of the Peace them ſelues haue in many caſes perfourmed their dutie in both, when they haue in the one pronounced that which is due to the offendour.

Execution, for the Queene.

Howbeit, for as muche as that which they are to doe by way of Execution, offereth profite, either to the Queene, or to her ſubiectes: and that which pertayneth to the Queene, is brought about, eyther mediat-

mediatly, first by Processe (or Imprisonment) for the Fine, then by Assessing of the Fine, and lastlye, by Estreating the same: or else immediatlye, by Estreating of the penaltie and forfeyture: I will first bestowe a fewe wordes vppon the Fine and Estreates for the Queene, and then speake of the benefite that belongeth to the subiect.

Where the Conuiction is for Tresspasses against the Peace, Riots, and such other Contempts and offences, against the Commission or Statutes, for the which no certayne Fine is appoynted: there (as you haue séene alreadie) the iudgement is, That the partie shall be taken to satisfie to the Queene her Fine. And thereupon, the *Capias pro fine*, and (if the partie can not be founde) other Iudiciall Processe goeth out, till he be Outlawed: vnlesse it be in a verie fewe cases where by ỹ words of the Statuts them selues they may procéede to assesse the Fine in the presence of the parties, without calling them by any Processe: for, so it standeth in the Statute of Alehouses. 5. E. 6. cap. 25: As I tolde you euen now and in the Statute of High wayes. 5. Elizab. ca. 13.

But if the partie be brought in, then is he a prisoner, and then are the Iustices of Peace (by

(by their discretion) to assesse the Fine, and to estreate it, and deliuer him.

For in no case (as I take it) can they of themselues leuie any Fine, or forfeiture, due to the Queene: insomuch as not they, but the Shirife is the accomptãt for all such matters.

Imprisonment. The imprisonment that I speake of, is only to the ende that the Prince may haue the Fine: and therefore, vpon the payment thereof (or vpon pledges found by Recognusance to pay it) the offendour ought to be deliuered. 2. Mar. Brooke Imprison. 100.

Difference betwene Fine, & Amercement. Hereof also the Fine toke first his name, of the Latine *Finis*, because it maketh an end with the Prince, for his imprisonment for the offence committed against his Law.

And in that respect chiefly, doth it differre from an Amercement. For when the offendor hath not so deepely trespassed, that therby he deserueth any bodly punishment at all, as if he be *nonsuit* in an action, or do commit any such like fault: he is sayd to fall into ỹ Kings Mercie: because he is therein mercifully to be dealt with: and by the Great charter. ca. 14. that Amercement and summe of money which he is to pay for the same, ought to be assessed and affeered by the good and lawfull men of the neighbourhode, which also Glanuil lib. 9. cap. 11. affirmeth to haue bene the Law

Law of the lande long before that time, ſaying that *Miſericordia Domini Regis eſt, qua quis per iuramentum legalium hominum de Viceneto, eatenus amerciandus eſt, ne aliquid de ſuo honorabili cõtenemento amittat.* But where the offence or Contempt falleth out to be ſo great, that it aſketh the impriſonment of the bodie it ſelfe, and that during the Kings will and pleaſure: then is the partie to redéeme his libertie with ſome portion of money, as he can beſt agrée with the King or his Juſtices for the ſame, which compoſition, is properly called his Fine, or his Raunſome, & in Latine *Redẽptio*, as may be plainly ſéene by the Statute of *Marleb.* 52.H.3.ca.1.2.3.& 4. And by the Statute called Ragman, and diuerſe other auncient Statuts. But of later time the Juſtices haue in ſome caſes of Amercements alſo vſed to aſſeſſe and rate themſelues without any other helpe: As where the Officers of their Courts haue offended, 33. H.6.54:34 H.6.20: & Lo.5.E.4.5. which ſéemeth to make an other difference betwene the two wordes. But becauſe neither of theſe be ſtrictly obſerued in our common ſpéeche, nor yet in the vnderſtanding of the Statutes of later time, I will no longer ſtand vpon it.

Fine, by diſcretion of the *Iuſtices*.

Nowe then, if the offence be Fineable, by generall wordes onely, without ſpeaking of any

any Fine, or without shewing by whom it shall be assessed (for so it is commonly in the elder Statutes that do prohibite any thing to be done) there the assessement thereof belongeth to the Iustices, before whome the Conuiction is lawfully had.

Again, if it be Finable by these (or such like) wordes, At the Kings will, or At the Kings pleasure (as you shal find it in many Statuts) then also the same Iustices (before whom the Conuiction was) shal assesse the Fine at their wills and pleasures: For (say the Bookes. 2. R.3.11: & 18.H.8.1.) the King (in all such cases) vttereth his owne will and pleasure, by the mouthes of his Iustices.

And yet some Statutes (vsing playner speech) do namely referre the Fine to the discretion of the Iustices of Peace.

Destroy the Fry of Fish.

For, they may (after Conuiction before them) Fine (by their discretions) such as take Salmons, or destroy the Fry of Fishe in Riuers, against the Statutes. W.2.cap.47:13. R.2.c.19: & 17.R 2.c.9. And as this is sayd of the Fine. so sundrie Statutes doe giue the same power to the Iustices of Peace, in the execution of the corporal punishment it selfe: as you haue already heard in the case of counfeiters of false letters or tokens, and may reade in other the Statutes at large. For, I

labour

labour to be shoꝛt, and thereforꝛe I giue but an allay of eche thing, knowing that these Iustices will not proceede to the execution of any Statute without the sight of the Statute it selfe, howsoeuer they should finde it alleaged by me.

And in these cases, (as in cases of Amercementes) the Iustices ought to take heede that the Fines be reasonable and iust, hauing regarde to the quantity of the trespasse, and the causes foꝛ which they be made, as it is commaunded by the Statute. 34. E. 3. ca. 1.

This Fine (oꝛ peine) awarded by the discretion of the Iustices of Peace, shall doe the moꝛe good, both to the Prince in profite, to the people in example, and to the Iustices themselues in credite, if it bee pronounced at the Benche openly (as it ought to bee) and not shuffled vppe in a Chamber (oꝛ Coꝛner) secretely, as in some places it hath beene vsed to bee. Fine, to be assessed openly.

I haue heard, that in cases where the Statutes doe appoynt a certayne foꝛfeiture, as fiue pounds oꝛ tenne poundes &c. yet the practise is, to mitigate the same by discretion, if so bee that the partie will come in, and put himselfe *in gratiam Regine*, without playne confession of the faulte, as I haue tolde you befoꝛe. So that the Fine shall bee small, Mitigation of the forfeiture of a Statute.

where

where the fault was great, and the penaltie of the Law it selfe not small.

But this maner of doing is (in my mind) so voide of sounde reason, that I can not recõmende it to the Iustices of Peace, but doe rather condemne it as a mockerie of the Law, and I finde, that sundry Statutes (fearing belike some suche thing) haue specially preuented it, commaunding that Iustices of the Peace shall assesse no lesse Fine, than is in those Statutes them selues before hande appointed.

Such is the Statute (17. E. 4. cap. 4) of Tiles: the Statute (33. H. 8. ca. 6.) of Crosse-bowes and hand Gunnes: and the Statute (5. E. 6. ca. 25.) concerning Alehouses: and such others may be found, if the Bookes of Statuts be well perused.

Estreating for the Queene.

But hitherto we haue not sufficiently performed that, which the Commission of the Peace hath in these wordes: *Saluis nobis amerciamentis, & aliis ad nos inde spectantibus:* and therefore, it is not enough to haue assessed the Fine, but we must also disclose the meanes, by which, as well this Fine that is reduced to certainetie by the discretion of the Iustices, as all other Amercementes & those other penalties and forfeitures that are certainly prefined by wordes of the Statutes, may

may be leuied and brought into the Princes coffers.

Order was taken by an auncient Statute, intituled *de Scaccario*, and noted to be made 51.H.3. that all Iustices, Commissioners, and Enquirers whatsoeuer, shoulde deliuer into the Eschequer at the feast of S. Michael yerely, the extracts of Fines and Amerciaments tared and made before them, that the King might be duely aunswered thereof. And the same (in effect) was afterward confirmed by an other Statute, intituled, *De forma mittendi extreta ad Scaccarium*, which although it be sayd to be made 15.E.2. Yet forasmuch as it mentioneth that the former Statute was made in the time of the father of that King which made the later, it must nedes be, that either the one or the other of them was made in the time of King E.1.

No doubt but this ordinance doth extende to the Iustices of Peace, as a man may easily gather by words in the Statute of Labourers 5.Elizab.ca.4: and by the act of Sewers. 13.Elizab.ca.9. and other Statutes. But because it is verie generall, and hath nothing peculiar vnto them from other Iustices, I will descende to lower times, and loke there for nearer helpes.

The Statute (12.R.2.ca.10.) had allowed

to euerie Iustice of the Peace foure shillings by the daye, for the time of their Quarter Sessions, to bee payed (by the handes of the Shirife) of the Fines, and Amerciamentes comming of the same Sessions. But, because it was sone after seene, that it was a great delay to the Iustices of Peace in this paymente, to expecte the leuying of these Fines and Amerciamentes by Estreates, first sent vppe, to the Eschequer, and then deliuered thence to the Shirife (which was at that time the common manner of leuying Fines and Amerciamentes) therefore it was within two yeares after (*videlicet* 14. R. 2. cap. 11.) prouided, that the Estreates of the Iustices of Peace should bee indented (or doubled) and the one parte thereof deliuered by them to the Shirife, to leuie the money thereof rising, and to pay the Iustices their wages by Indenture betwene him and them to be made: and the other parte thereof sent into the Eschequer to charge the Shirife withall vpon the making of his account there.

And hereby (as I thinke) the Estreates of the Iustices of the Peace be nowe an immediat warrant for the Shirife to leuie, not only the Fines and Amerciamentes, but also all other Allues, Penalties, Losses, Forfeitures, and

and Summes whatsoeuer, arising before them: for the wordes of the Statute are generall, The money thereof arising and therfore whatsoeuer summes are to be Estreated into the Eschequer by the one of these doubles, the same are also to be leuied by the Shirife by the other double.

Such order did the Statute (33. H.8. cap. 10. of the fire weekes Sessions) take, for the leuying as well of Fines and Amerciamentes, as of Peines, Losses, and Forfeitures of money: So doth the Statute of Tillage (2. & 3. Phil. & Mar. cap. 2.) by way of admittance rehearse, that Iustices of the Peace may make out Processe for the leuying of Fines and Forfeitures before themselues: and so are the Estreates made, and the Fines and Forfeitures thereby leauied, at this presente time, if I bee not deceaued.

And these are properly called Estreates, of the worde *Extracta*, because they bee shorte Notes (or Memorialls) extracted (or drawen) out of the Recordes, by the Clarke of the Peace, and by him indented and deliuered sunderly, to the Shirife, and to the Barons of the Eschequer, bearing this (or the like) Title, *Extract. finium, & amerciamentorum forisfactorum, ad generalem Sessionem Pacis,*

tentam apud Maidstone, &c. Coram, &c. For the whole forme of the making wherof, there is full direction giuen to all Clarkes of Estreates, by the Statute, 7. H. 4. ca. 3. Whereunto I referre them.

Iustices of the Peace ought to haue care of Estreates.

Howbeit, I do not thinke, that in our case, this dutie of Estreating is so peculiar to the Clarke of the Peace, but that the Iustices of the Peace them selues, ought also to haue a common and carefull eye vnto it: For (if you remember) it is both specially prouided for in the Commission, and also an Article of their Oath, to see vnto the faithfull Entrie and Certificat of the Issues, Fines, Forfeits, and Amerciamentes, that doe happen before them: And therefore, it were well done (in mine opinion) if the Iustices would, by turne (or otherwise) both take knowledge of things that haue passed before them, and also take order that the same be certified accordingly: least otherwise, it lye altogither in the power of the Clarke of the Peace, to Saue or Slay (as one sayd) the Sparrow that he holdeth closed in his hand.

Of

Of Executorie *Processe*, & execution for the parties that sue, or for other persons.

CAP. XVII.



Albeit that the Iustices of Peace haue this power, to make warrant for leuying the Amerciamentes, Fines, and other forfeits, that doe growe vnto the Queene by their seruice: yet is it commonly thought that they may not, (but in some cases onely, and that by speciall speech of the Statutes) make execution (either for him that will sue, or for any other) of such parte of the forfeiture, as the Law doth afford them.

For (most commonly) the partie that will sue, is put to his Action at the Common law for recouerie of that which he is to haue: as, for his moitie of a forfeiture against the Statute (24. H.8. ca.13.) of apparell, he is perhappes driuen to his Action of Detinue: for his moytie growing vppon conuiction of any offence, contrarie to the Statute (13. Eli. Apparell.

Elizab.cap.14.) concerning bringing ouer of
Bowstaues. Bowstaues, or contrary to the statute of Mu-
Musters. sters (4.& 5.Phil.& Mar.ca.3.) he is to com-
mence his Action (or Bill) of Debt: and so of
sundry others, that are ech where to be foūd.
But where they haue power either by their
Commission or by any Statute, to heare and
determine any cause at the sute of a priuate
person, I do not see how the cause can well be
said to be fully determined till the complaint
hath had the effect of his sute, which can not
be without execution.

Forestallers. Doubtlesse, by speciall prouision, made in
the Statute (5.E.6.ca.14.) against Forestal-
lers, the Iustices of the Peace may make exe-
cution of the one moitie of the forfeiture for
him that sueth, by *fieri facias*, or *capias*, as the
Queenes Iustices at *Westminster* vse to doe.

Armour. The like power, in like words, haue they,
for leuying ỹ moitie of any forfeture against
the Statute of Armour, made 4.& 5.Phil.&
Mar.ca.2 or against the Statute (made 5.E-
lizab.cap.12.) concerning Badgers, Drouers
&c. and their licences.

Liueries. For the moitie, growing to the Informour
vpon the Statute of Liueries (8.E.4.cap.2.)
they shall make suche execution, as ought to
be had in Recoueries of Det or Trespalle, at
his owne pleasure.

They

They may also awarde execution for the partie that sueth, vpon the Statute of Flaxe and Hemp (24.H.8.ca.4.) by such Processe as to them shall seeme by their discretion. Flaxe and Hempe.

And the Estreates (made by the Clarke of the Peace) of forfaits for defaultes of amending Highwayes, are a sufficient warrant to the Constables to leuie the same by Distresse to the vse of the Churchwardens of the Parish where the default was, towardes the amendment of the said wayes. 2.& 3.Phi. & Mar.ca.8:& 5.Elizab.ca.13. Highwayes.

And likewise, the Estreates of the Iustices of Peace (of any Fines, assessed by them vpon Presentmentes in the Shirifes Turne) being inrolled, indented, & deliuered to the Shirife. are a good warrãt vnto him to leuy the same to the vse of him that was Shirife at the time of such Presentmentes taken. 1.E.4.ca.2. Shirifes Turne.

Search may afforde you some moe examples, but these may suffise for my desire, which is not (in this, or any other) to recount all, but to make some proofe of that which I offer and propose.

Of

Of Certifying Recordes of the Sessions of the Peace, to other Courtes, or Officers.

Cap. xviii.

As we haue alreadie manifested, that Iustices of the Peace haue not a sufficient and thorowe power of them selues to heare and determine all causes whereof they haue in their Sessions auctoritie to enquire: So also be there sundry things determinable before them there, which neuertheless may (in some respectes) be brought to a seconde handling: either to the ende to reuerse that which they haue done, or that their doings may be an euidence and testimonie in the triall of causes, before other Iudges.

And because this can not in any sorte be performed, without the presence of those former Recordes (or the transcripts thereof) which doe remayne with the Iustices of the Peace, it is therefore requisite, that they

ſoe make Certificat of them vnto thoſe other Courtes, or officers, that ſhall be intereſſed to vſe the ſame.

But as this Certificat ought in ſome caſes to bée made by the Iuſtices of the Peace, or their Clarke, without any writ of *Certiorari* therefore directed, and in ſome other caſes they may ſpare to Certifie vntill that Writte or ſome other commaundement bée brought vnto them: So alſo ſometimes they are to certifie and ſend vp onely a Tenor (or Tranſcript) of the Recorde before them, and ſometimes the verie Recorde it ſelfe muſt be conueyed from them.

Certifie without the writ of *Certiorari*.

The Clarke of the Peace muſt vnder the paine of xl. ℔. certifie into the Kings Benche a true tranſcript of euery Attainder, Vtlawrie, and Conuiction (had before Iuſtices of the Peace in any place, except *Wales*, *Cheſter*, *Lancaſter*, and *Durham*) within 40. dayes after, if it bée then Terme, & if not, then within 20. dayes after the beginning of the next Terme, that the ſame may there alſo appeare of Record to be vſed as that Statute hath appointed if there bée cauſe: and he muſt alſo deliuer to the Ordinarie a Tranſcript of Clarkes conuicted or attainted before the ſayd Iuſtices. 34. H. 8. c. 14. But enquire whether this laſt bée needefull at this day, by rea-

son that Clarkes bée not now deliuered to the Ordinarie, by the Statute. 18.El.ca.7.

And if a principal bée attainted of murder or felonie in one Countie, whervnto an other is accessorie in an other Countie, then vpon writing from the Iustices of Gaole deliuerie, or Oier and Terminer, to the *Custos Rotulorum*, where such principall is attainted, he must certifie in writing vnder his Seale to the said Iustices, whether such principall be attainted, or otherwise discharged, or not, that they may proceede therevpon to the trial of the Accessorie. 2.E.6.c a.24.

But in cases where Iustices of the Peace haue power to receyue Enditements, and no power to proceede any further vppon them, (whereof you haue alreadye the examples, in the seuenth Chapter of this second Booke) there they ought to sende vppe and certifie the Enditements them selues, and that of duetie (as I thinke) without any *Certiorari* commaunding the same: bicause, hauing none auctoritie to heare and trye the offences, the Recordes thereof shall bée vnpossitable before them, and therefore they can haue no iust cauke to reteine them: and yet (for the more suertie) it is specially commaunded by 5.El.ca.1. that they shall certifie the presentmentes of some offences against

that

that Statute.

And so, if a man (bound to keepe ỳ Peace) doe make default of apparance at the next Quarter Sessions, the Recognusance it selfe (togither with the Recorde of that default) must be certified into the Chauncerie, Kings Benche, or Exchequer, that execution vppon the Recognusance may bee had there. 3. Henri. 7. cap. 1. and so ought it (as I thinke) if it bee presented that the partie hath forfayted his Recognusance by breache of the Peace: And likewise, if it bee presented before them, that the chattels of a man attainted of felonie, bee in the handes of an other. For, in these, and such other cases, where they can not of them selues proceede, they ought to sende the Recordes to such as haue auctoritie to determine vppon them, and otherwise they doe not discharge that duetie, which the wordes *Saluis, &c. & aliis ad nos inde spectantibus*, in the Commision doe seeme to expecte at their handes.

Furthermore, the Statute of Purueyours (2. & 3. Phil. & Mar. cap. 6.) doth appoynt the Iustices of the Peace, to certifie to the Treasorer of the Queenes household, the Dockets of Purueiours (brought to their Sessions by Constables) that the seruing of such

Commis-

Commissions, and the true aunswearing of purueyances, may bée the better examined thereby: and although it may bée doubted, whether these bée Recordes, or no, yet for that they are to bée certified from the Sessions of the Peace, I sticke not to afoard them this place. And if you will also repute in this number, the Licences (and such other actes of that kinde) which passe at the Sessions of the Peace, I will not bée against it.

Certiorari. Touching the *Certiorari*, if it be made accordingly, it is of force to remoue not only Enditements or other executorie Recordes, wherein the Iustices of Peace can goe no further, (and whereof I haue spoken already) but also the Recordes of causes, fully and lawfully heard and determined by them, to the ende that they may bée reuersed and annulled in the Kinges Benche, if good matter and cause doe so require.

For that preheminence hath the Kinges Benche, as you may sée by proofe, yea, all other the higher Courtes, may write to the Iustices of Peace, to certifie their Recordes, that doe make for the Triall of causes hanging in them, as you may reade 19. H. 6. 19. where they of the Commune Place, did send to the Iustices of Peace for an Enditement, bicause in a writte of Conspiracie, (brought before

before them) it was materiall to haue it.

And yet, neither they of the Commune Place, nor Kinges Benche, do vse to write for Enditements, or such other Recordes, vnlesse they bee thereunto enduced by a cause hanging in their owne Courtes before them. For, otherwise the right way to remoue them, is by *Certiorari* out of the Chauncerie, from whence they may bee transferred (by *Mittimus*) to any other Court. 41. lib. Ass. Pl. 22. Knyuet Chiefe Iustice.

Howbeit, a man may gather vpon the Booke (1. R. 3. 4.) that if any Recorde bee sent vp without warrant to such a higher Court, they may there proceede vpon it, because it is a Recorde in that Court, and that Court is the Court of the Queene, aswell as the other.

Of the generall, (or Quarter) *Sessions*, of the Peace.

Cap. xix.

WE haue hitherto laboured, and at the lengthe runne ouer, sundry things, which (in the opinion of some men) bee commune to all Sessions of the

the yeare: And yet, because there bée alſe certayne thinges (as it ſéemeth to mée) appropriated, ſome to any, and others to ſome one, of the generall Seſsions, it remayneth that we nowe diſtinguiſhe the Seſsions of the Peace, and enter into conſideration what is a generall, and what a ſpeciall Seſsion.

The generall Seſsions. The generall Seſsions of the Peace bée thoſe, which are prouided for the generall execution of the auctoritie of the Iuſtices of Peace, whether you reſpect ỳ limits of ỳ place within their Commiſsion, or the boundes of power proceéding from the Commiſsion and Statutes. For at theſe Seſsions (as ſayth M. Fitzh.) generally all thinges ought to bée giuen in Charge that doe lye within the auctoritie of theſe Iuſtices to bée determined.

Theſe bée moreouer called the Quarter Seſsions, bicauſe they bée holden Quarterly, or foure times in the yeare: and the Statute (4.H.7.ca.12.) tearmed them principall Seſsions, for that in them chiefly, the power of Iuſtices of the Peace doth ſhine and ſhewe it ſelfe: in which reſpect, ſome other Statuts doe giue them the name of open Seſsions alſo.

But we ſhall not néede to dwell vpon the names, whereof there can bée no great controuerſie,

trouersie, seeing that they all doe ayme at one marke: rather, because these generall Sessions bee at this day diuersly summoned, begonne, and continued, in diuers partes of the Realme, it lyeth fitly in my way, to make examination of that diuersitie in this doing.

How many *Sessions.*

For (to beginne with the Summons) the manner is (in some Shires) to summon yearly six standing Sessions of ye Peace, in others 8. in others 12. or 16. & in others otherwise. All which is done, chiefly vppon pretence to ease the Inhabitants of the Countie, for whome it would otherwise bee verie painfull to trauaile so often from all the partes of the Shire, to any one place of the same.

And therefore, such as doe maintaine 6. or 8. Sessions doe vse to Summon all the whole Shire to a couple of them, and to the residue they call onely such partes of the Shire, as they doe therefore specially appoint: But yet so, that (vpon the reckoning) eache corner of the Country giueth attendance at foure seuerall Sessions: which also falleth out accordingly in those Shires where they haue 12. or 16. Sessions. for albeit that they do not at any one time summone ye whole Shire to any one place (as ye others do) yet, diuiding their Shire into 3. or 4. partes, and keeping foure seuerall Sessions in eache of those partes, they also

(as

(as well as the other) doe serue their whole countrie with foure sundrye Sittings. And therefore (in myne opinion) although none of these doe follows the precise letter of the lawe, which requireth but onely foure quarter Sessions in any Shire, yet euery of them draweth neare to the true meaning of the law, which loketh for nothing els but that the Courte of these Sessions shoulde yearely bee foure tymes opened for the whole Countie.

But if there bee any, that doe (for this purpose) diuide their Shire into halfes, and doe holde onely foure Sessions in the yeare, that is to say, two in the one part, and two in the other, calling the one halfe of their Hundreds to those two Sessions at the one place, and the other halfe to the other two Sessions holden at the other place. These men (as some haue thought,) do neither reteine the letter, nor attaine the meaning of the lawe, in this their doing. For, vpon the matter, no part of their Shire hath any moe than two Sessions, which manner, who seeth not how much it may hinder Iustice?

And although that they will peraduenture seeke to salue it, in saying, that they doe call the Constables of the whole Shire to euerye of those Sessions: yet they can not so escape: for,

foꝛ, both reaſon it ſelfe, and their owne experience herein, doeth informe them, that it is likelie, they ſhall haue moe preſentmẽts, where moe perſons (that can preſent of their own knowledge) be aſſembled, and do take the charge vpon them.

Beſides all which, theſe men do not bring eaſe, but trauel and delaie to their countriemen, whom by this meane they compell, either to go far, out of one part into another, to haue a fault puniſhed, oꝛ elſe to tarrie foꝛ help til a Seſsiõ ſhal be kept in ẏ part where they dwel.

Neither may I well omitte, that this doing may breede danger to the Iuſtices themſelues, whileſt any of them (hauing taken a Recognuſaunce of a Tippler) doth not certifie it vntil the Seſsions happen to be in hys owne part, and in the meane ſeaſon, ẏ nexte Seſsion of the Peace within the ſhire chaunceth to be holden in the other part: whereof what may follow, the Statute (5. E. 6. ca. 25.) wil tel you, and teach them. And like faulte is it, though not like foꝛfeite, ſo to receiue a Recognuſaunce taken foꝛ the Peace, as you may ſee by the Statute, 3. H. 7. ca. 1.

Thus much of the ſummons (oꝛ number) of theſe Quarter Seſsions: Nowe followeth the time in which they ought to be holdẽ at,

The times, of holding the Quarter *Seſſions.*

aboute the whiche also all Counties doo not agree, and therfore, it shal be good (before other things) to peruse those Statuts, which do (either in deede, or shewe) concerne thys pointe.

The Statute 25. E. 3. ca. 8 ordained thus: Item that the saide Iustices make their Sessions in all the Counties of *England*, at the least, foure times in the yeare, *viz.*

At { The Annuntiation of our Lady:
Saint Margaret:
Saint Michael: and
Saint Nicholas.

The Statute 36. E. 3. ca. 12. saith, That the Commission of the Peace shall make mention that the *Sessions* shal be holden thus:

{ Within the *vtas* of the Epiphanie:
Within the second weeke of Lent:
Betweene Pentecost and Midsomer:
Within the *vtas* of Saint Michael.

The Statute 12. R. 2. ca. 10. doeth afterwarde set the matter at libertie, saying, They shall holde their Sessions in euerie quarter of the yeare at the least: But they of *Middlesex* bee excepted by 14. H. 6. ca. 4.

Lastly

Lastly the Statute 2 H.5.ca.4. doth reduce the times to certaintie againe, saying thus:

Ouer all the Realme, the *Sessions* shall bee,

In the first weeke after { Saint Michael, / The Epiphanie, / The clause of Easter, / The translatiō of Saint Thomas the Martyre.

The first of these foure Statutes, doeth (in shewe, and in commune opinion) concerne the Sessions of the Iustices of Peace, but in trueth it belongeth not at all vnto them, for it was made to direct the Iustices of Labourers in the times of holding theyr Sessions and they were not Commissioners of the Peace, but speciall Iustices for ỹ causes of Labourers alone, not resiaunt in the Countrey, but sent downe for the time of that seruice, as it may expressely appeare, not onelye by the preamble and all the partes of the saide Statute it selfe, but also by the Statutes 28. Edward.3.cap.5: 31.Edward.3.cap.6: &.34.Edward 3.cap.11. during all whiche time also, the Wardeins of the Peace were neither called Iustices by anye Statute, nor autorized to deale with Labourers. For in 34. Edward.3.cap.1. they are called Wardeins, and the firste name

of Iustices of the Peace by anye Statute (that I haue seene) is founde 36. Edward.3. cap.12. before mentioned, where it is sayde thus, In the Commissions of Iustices of the Peace, and of Labourers, expresse mention shall bee made, that they shall holde theyr Sessions &c. as before. And as for the auctoritie ouer Labourers, that was first appointed to Iustices of the Peace by ỳ Statute 42. Edward.3. cap.6 in the fourth Chapter of whych sayde Statute, there were certaine Commissions disliked (of whiche I beleeue that of the Iustices of Labourers was ons) and order taken, that from thencefoorth some of the Iustices of the one Bench or other, or Iustices of Assise, or Iustices of the Peace with other of the most worthy of the Countrie should be named in all Commissions of Enquirie. So that we haue not to doe with the Statute 25 Edward.3. cap.8. and may therefore proceede to examine the rest.

The next is, the Statute 36. Edward.3. ca.12. But neyther that maketh anye Lawe for holding the Sessions of the Peace at thys day, as well bycause it was set at large by 12 R.2. ca.10. as also (if it were not) bycause the Commissions of our time, vse no suche mention as it commaundeth.

Then

Then come wée to 2. Henri. 5. cap. 4. which restrayneth the libertie of 12. Richard. 2. cap. 10. and reduceth ẏ times of these Sessions to certaintie againe: and yet so, that the one of these Statutes doeth not frette the other, for the latter is an exposition of ẏ former, so that it is all one as if they both had bene but one Lawe, and shoulde haue said, That the Iustices of Peace shall holde their Sessions in euerie quarter of the yeare at the leaste, namely in the firste weeke after Sainct Michaell, in the firste weeke after the Epiphanie. &c.

Nowe, to proue that the Quarter Sessions of the Peace were holden after the prescript of this Statute (2. H. 5. cap. 4.) vntyll the time of the Statute, 5. Eli. ca. 4. these bee my warrants.

First, M Marrow saith plainly, that in his dayes the Quarter Sessions were so holden.

Secondly, for as muchs as there can bee no higher auctoritie of exposition than to cõstrue one Statute by an other, I will shewe you some Statutes also that haue accounted of these Sessions to be holden accordingly.

At the Generall Sessions after the feast of Sainct Michaell, the *Custos Rotulorum*, or (in his absence) ẏ eldest of the *Quorũ* oughte

to appointe two Iustices of the Peace for the ouersight and controlement of the Shiriffes, and their Clarkes &c. by the Statute 11.H.7. cap.15.

And at the generall Sessions holden at Michaelmas, the Iustices of Peace ought to appointe Searchers for Braile and Pewter: by the Statutes. 19. Henri.7.cap.6.& 4. Henri. 8. cap. 7. where the worde (At) muste of necessitie bee vnderstoode for (After) whether you will take it according to the sayde Statute 2. Henri.5.cap.4. whyche sayeth plainely (After) or according to 36. Edward.3.cap.12. whiche sayeth Within the *Vtas* of Saincte Michaell, seeyng that the *Vtas* (as euerie man knoweth) is alwayes after the feast, and not beefore it.

But (to proue two at once) whereas the Statute 27.H.8.ca.5. had taken order for Iustices of the Peace to be made in *Cheshire*, and certain other shires, and had willed that they should be sworn to the keeping of their Sessions of the Peace &c. as other Iustices of the Peace in other the Counties of *Englande* were, it fell out, that the Gentlemen and freeholders of the Countrie of *Cheshire* were much troubled by attending yearely, both at the saide 4. quarter Sessions, and also at 8 or 9. Countie Courts which they had besides, &

there-

therupō it was prouided (by another statute 32. H.8.ca.42.) ꝑ the administration of Iustice (before time vsed in ꝑ said Coūtie Courtes) should frō thencefoꝛth be done & executed at two times in ꝑ yere only, ꝑ is to say, at the Sessiōs next after the feast of S. Michael, & at the Sessiōs next after Easter yerely foꝛ euer.

I might adde, that the quarter Sessions in the weeke next after ꝑ Claule of Easter, was tyed to the Tuesday of that weeke, by the Statute 33. H.8.c.10. And ꝑ it was not without some graue consideration, that the Statute 2. H.5.ca.4 did commaunde the Sessions of the Peace to be holden ouer all *Englande*, in one and the selfsame weeke: But I think it clearely ynoughe proued, that hitherto these Quarter Sessions ought to bee directed by that Statute: and therfoꝛe I will descend to the Statute 5. El.ca.4 and weigh the time in which they ought to be holden at this verie day.

The woꝛds of that Statute be these: As much of all the Statutes heretofore made, & euerie braunche of them, as touche or concerne the hyring, keeping, departing, working, wages, or order of Seruantes, Workemen, Artificers, Apprentices, or Labourers, or anye of them, and the penalties and forfaitures concerning the same, shal be

repealed & vtterly voide & of none effect: And that all the saide Statutes, and euerie braunche thereof, for anie matter contained in them, and not repealed by this Statute, shall remaine and bee in ful force and effect, anye thing in this Statute to the contrarie notwithstanding.

Upon this Statute some haue thought, ỹ the said Statute, 2.H.5.ca.4 is repealed concerning the braunche of the Sessions: And others do thinke the contrarie: and therefore let vs holde the beame, and put in balance their reasons on either side.

They of the one side doe alleage, that this braunche of the Sessions lyeth in the midst of that Statute (2.Henrie.5.) whiche was made for Labourers, and that it was mente only of Sessions to be holden for the order of Labourers, and so is within the wordes of repeale.

And they saye also, that it will fall out vnseasonablie, to holde the Sessions (especiallye that after Michaelmas) according to this Statute, bycause the same happeneth verie neare to that tearme of Sainct Michael, whereat the presence of manye is no lesse requisite, than at the Sessions of the Peace.

They

They, on the other side, doe gather vppon the said words of 5. El. cap. 4. that some parts of the Statutes of Labourers must needs remaine in force, notwithstãding those words of repeale: for otherwise (say they) the makers of 5. El. might (with lesse labour of speach) haue repealed them al at once.

And therefore they say, that two Statutes of Labourers, (viz. 12. R. 2. cap. 3: and 23. H. 6. cap. 13.) bee yet in force, for so much of them as doth concerne Victuallers: and likewise, that so much of this Statute 2. H. 5. cap. 4. as doth concerne the resiancie of those Iustices of the Peace whiche be named of the *Quorũ*, and the holding of the Quarter Sessions, is vnrepealed also; for that that they concerne not the hyring, keeping, &c. or order of seruants, &c. (whych might bee done wythout the Sessions of the Peace) but the general seruice of the Commission and Statutes that doe authorize the Iustices of Peace, whereof also these Sessions be called the Sessions of the Peace.

And it is not newe (in their opinions) to finde a generall ordinaunce in a particular Statute: as in the Statute 38. H. 8. ca. 39. made specially for the erection of the Courte of Surueyours, there is a generall Lawe, that all Obligations concerning the Kings

commoditie, shall be made to himself by the words *Domino regi, &c.*

Neither was there euer (saye they) anye Quarter Sessions holden (onely for the causes of Labourers) by the Iustices of Peace, although the petite Sessions of Constables were chiefly bent to that seruice.

And that the saide Statute 2. H. 5. dide meane the verie Sessions of the Peace, & no other, they offer to proue by the auctoritie of those selfe same Statutes, which bee alleadged already for the holding of the Quarter Sessions, vntil the time of this Act of Queene Elizabeth, for that they haue heretofore so construed and taken the Statute.

But to make the proofe full, they adde, that euen this same Statute of repeale, 5. El. cap. 4. doth in a certaine place thereof speake of the Quarter Sessions to be holden after Easter, which can not be vnderstode of any other of those Statutes concerning the Sessions. but onelie of 2. H. 5. cap. 4. because the reste (that haue certaintie) do appoint that Session, eyther at the Annuntiation of the blessed Virgine, or in the seconde weeke of Lent. And likewise, that the Statutes 8. Eli. cap. 9. concerning the prices of vesselles, of Sope, Ale and Beere: and 14. Elizab. cap. 5: and 18. Elizab. cap. 3. concerning poore people

and

and vagabonds, haue mention of the Quarter Sessions, to bee holden next after Easter. Which Statutes, as they make not in this point, any new Lawe, but bee grounded vpon former Lawe, supposed to be in force: So allowing of any one of these foure Sessions, they doe therein giue allowance of all the other three also.

As for answeare to the obiection of the neareneſſe of the Michaelmaſſe Sessions to the Michaelmaſſe Terme, they say, that this was foreseene to the makers of that Statute 2. H. 5. who do therein dispense with the absence of the Iustices of the Benches at *Westminst.* the Barons of the Escheaquer, &c. And yet, to the end, that they also might once in the yere be present at a Session of the Peace for the better direction of that seruice, the Statute 33. H. 8. ca. 10. did specially appoint, that the Easter Sessions shoulde bee holden yerely vpon the Tewsday nexte after Low Sonday, in euerie Shire of the Realme.

Now, if it shal seeme to any mā a strange thing that I moue question of the tyme of holding these Sessions: I lette him knowe, first, that it is one of the Articles of the Oath ministred to the Iustices of Peace, that they shall holde their Sessions after the forme of Statutes thereof made.

Second-

Secondly, that the articles of many Statutes, are inquirable, as it seemeth to me, onely at the Quarter Sessions: because they are not in the Commission at all, and the Statutes them selues doe appoint of none other Inquiry, but at the Quarter Sessions: and then if the Iustices of Peace do not hold their Quarter Sessions according to ỳ times appointed by Lawe, they be no Quarter, but Speciall Sessions, and consequently, such Statutes shall eyther not be enquired of at all, or else enquired of without Warrant, both whych be verie greate inconueniences. So that this matter (if it be not rightly conceiued) tendeth both to the hurt of the conscience, and to the hinderance of this seruice.

How long the Quarter *Sessions* shall continue.

Touching the continuance of these quarter Sessions, I haue shortelye but this one thing to say, that almost two hundred yeres agoe, it was ordained by Statute (12. R. 2. cap. 10.) that they shoulde bee continued three dayes togither (if neede were) vppon paine of punishment: And yet in these days of ours, wherein the affaires of the Sessions be exceedingly encreased (and consequently, more neede to continue them now than before) many doe scantly affoorde them three whole houres, besides that time whyche is spent in giuing of the charge.

But

But it is more than time, that I descende to some of those Statutes, which do specially relie vppon the Quarter Sessions, & therefore I will firste beginne with such as haue reference indifferently to any of them. Things referred to the Quarter *Sessions.*

The Iustices of Peace maye in their open Quarter Sessions, enquire of, heare, and determine, all offences (excepte treason, and misprision of treason) committed againste the Acte made (23. El. ca. 1.) for reteyning the Queenes subiects in their due obedience. Pope.

They may also in their open Quarter Sessions, enquire of such as do extoll the vsurped auctoritie of the sea of *Rome*, againste the Statute 5. Eli. can: And the Clarke of the Peace must reade that Acte at euerie of the Quarter Sessions. Pope. Acte read.

And they may in their generall (or Quarter) Sessions, enquire of seditious wordes, and rumours vttered againste the Queenes Maiestie. 23. E. cap. 2. Seditious wordes.

All the Articles, mentioned in the Statute (33. H. 8. cap. 10.) shall be enquired of, & reformed by the Iustices of Peace in theyr auntient Quarter Sessions. 37. H. 8. cap. 7. Execution of Statutes.

They may in their generall Sessions determine of the offences of killing and selling Wainlings vnder two yeres age, 24. H. 8. cap. 6: & 13. Eli. cap. 25: and of the offences Wainlings.

of

Milch Kine, and Calues. of not keeping Mylch Kine and Calues, 2. & 3. Phillip. & Mar. cap. 3: & 13. Elizab. cap. 25.

Forstalling. The Enquirie, Hearing, and Determination of Forestallings, ingrossings, and Regratings, maye bee at the Quarter Sessions. 5. E. 6. cap. 14.

Alehouse. The Enquirie, whether Ale-house keepers haue forfeited theyr Recognusances, ought to bee at the Quarter Sessions 5. E. 6. cap. 25.

Hunting. The Fine for vnlawfull Huntyng by night, or wyth painted faces, shall bee sette at the nexte generall Sessions, 1. H. 7. cap. 7.

Armour. Iustices of the Peace maye in theyr Quarter Sessions heare and determine offences againste the Statute of Armour, 4. & 5. Phil. & Mar. cap. 2. and may there enquire of, heare, and determine the offences of putting to pasture anye stoned Horses, &c. vnder the heigth appointed by the Statute 32. H. 8. cap. 13: And maye there also, enquire of conueying Horses into *Scotlande*. 23. H. 8. cap. 16: 1. E. 6. cap. 5: & 1. Elizab. cap. 8.

Horses.

Highwayes. They maye at their like Sessions, enquire of, and determine the offences of not amending the highwayes 2. & 3. Phil. & Mar. cap. 8: 5. Elizab. cap. 13: & 18. Elizabeth.

Zabeth. cap. 9.

In their Quarter and generall Seſsions, they ought to enquire of, heare, and determine the offences of not keeping continuall houſholdes vppon the Precinctes of the late Monaſteries 27. H. 8. cap. 5: 5. Elizab. ca. 2: & 14. Elizab. ca. 11. Keepe houſholdes.

And in their Quarter Seſsions, they may heare and determine the offences of Informers 18. Elizab. cap. 5: And at the like Seſsions they may doe the like for offendors in Periurie, 5. Eliz. ca. 9. Informers. Periurie.

Suche as bee ſuſpected of vſing counterfaite Tokens, or Letters, maye bee called by Proceſſe to the nexte generall Seſsions, and muſte bee convicted there. 33. H. 8. cap. 1. Counterfait tokens, or Letters.

Iuſtices of the Peace maye in theyr open Quarter Seſsions, call beefore them the owner of a Wood, and twelue of the Cõmoners there, for ſetting out the fourth parte thereof. 35. H. 8. cap. 17: & 13. Elizab. cap. 25. Wood.

The proofe of the ſufficiencie or inſufficiencie of the cauſe, for whiche the Maiſter may put away his ſeruaunt, or the ſeruaunt may depart from his Maiſter, beefore the end of the terme, ſhall be made at the Quarter Seſsions, 5. Elizab. cap. 4. Maiſter and Seruant.

The

Badgers. The licences for Badgers, Drouers, &c. are to be granted in the open Quarter Sessions, 5. Eliz. cap. 12. and the prohibition of transporting Corne, is to be made by the more part of the Iustices of Peace at their Quarter Sessions. 13. Eli. ca. 13.

Transport corne.

Poore. The licences that the poore of surcharged Cities, or Townes, may begge, are to be giuen at the generall Sessions: and he that is grieued with any taration made vppon him for the poore, may be eased there: and the taration for the relieue of the prisoners in Gaoles, ought to be made there also. 14. El. cap. 5.

Prisoners.

Tauerne. The assignment of such as shall keepe any Tauerne to vtter Wine, ought by the Statute (7. E. 6. cap. 5.) to be made at the generall Sessions.

Beggars childe. A Beggers child may at the generall Sessions, be bounde to serue any subiect of this Realme, being of honest calling, 14. Eli. ca. 5: & 18. El. cap. 3.

Purueiors. The Dockets of Purueyours ought to be deliuered ouer to the Iustices of Peace at the next generall Sessions, 2. & 3. Phil. & Ma. cap. 6.

Act reade. The Acte of rebellious assemblies (or the effecte thereof) ought to be openly read at euerie Quarter Session, 1. Mar. Parl. 1. ca. 12: & 1. Eliza.

1. Elizab. cap. 17.

And enquire, whether the Proclamation (set forth 4. H. 7. cap. 12.) bee not yet to be read at euery Quarter Session also: for some doe thinke, that it was to endure for the time of that King onelie. Proclamation read.

These, and some others (which I omitte) haue reference (as you see) to any of the same generall Sessions: for so many of the which, as bee inquirable (and ought therefore to bee giuen in charge) I maye seeme, eyther to haue committed a Tautologie in reporting thē twice, or (which is worse) to haue written a Repugnancie, in that I did firste deliuer them as common to all Sessions of the Peace, and doe nowe here restraine them as proper to the generall. But this is shortly the cause. Some men bee of the opinion, that these Statutes which be enquirable (by expresse words) at the Quarter Sessions onlie, may neuertheless be enquired of at the speciall Sessions also. And I haue hitherto doubted, whether that be true in all cases, or no: for, as the Iustices of Peace haue none other warrant to enquire of these matters, but onely by those Statutes which doe appoint the enquirie to be made at the Quarter Sessions: So (as me thinketh) they ought to pursue that warrant, if they wil take vpō The reason why some things be repeated.

them to enquire and haue any care to haue their doings warranted. And I thinke it bée no greate doubte, but that as the Statutes do many times giue degrées of power, sometimes in great measure, and sometimes in lesse: So also, the same Statutes maye restraine the auctoritie of Enquirie to some certain Sessions, & especially to the Quarter Sessions, in respecte that they be bothe more open, more commonly knowen before hand, and better furnished with Iustices, and consequently, the méeter for administration of Iustice specially in affaires of the waightier sort.

And therefore, I haue in this parte laboured, both to satisfie their opinion in the one, and to serue mine owne phantasie in the other.

Easter Sessions. But nowe also, let vs loke out some such things, as bée lefte onelie to the Easter or Michaelmasse Sessions.

Prices of Vessels. The prices of vesselles, for Sope, Ale, and Bære, shall bée set, and proclaimed by the Iustices of Peace at their Quarter Sessions after Easter. 8. Elizab. cap. 9.

Wages of Seruants. The wages of Seruants and Labourers, are to bée rated by the Iustices of Peace at their Easter Sessions or wythin sixe weeks after Easter. 5. Elizab. cap. 4.

And

And they muste yearely in the same Sessions examine the performaunce, or not performaunce of the Statute, made for the poore. 14 Elizab. cap. 5. Poore.

They must also in the same generall Sessions yearely, take order for the prouision of stockes and store, for the setting of youth, and ydle persons on worke: and ought then also to appoint houses of correction for such as will not worke 18. Elizab. cap. 3. Worke and correction, for ydle persons.

At the Quarter Sessions to be holden after Michaelmasse the Iustices of Peace are to appoint Searchers for Brasse and Pewter 19. H. 7. cap. 6: & 4 H. 8. cap. 7. Michaelmasse Sessions. Brasse, and Pewter.

And at the generall Sessions after Michaelmasse two Iustices of the Peace oughte to be appointed by the *Custos Rotulorum*, or (in his absence) by the eldest of the *Quorum*, for the ouersight and controllment of the Shirifes Bookes, &c. 11. H. 7. cap. 15. Shirifes Bookes.

Of the speciall *Sessions* of the Peace.

Cap. xx.

THe speciall Sessions of the Peace, do varie from the generall. in this chiefly e, that they bée holden at other times, when it shall please the Iustices themselues, or any two of them (the one being of the *Quorum*) to appointe them. And this power they haue, not onely by the Commission, where it saith, *Ad certos dies, & loca, quos vos, seu aliqui vestrum, ad hoc providerit is &c.* but also by the Statute 2. H. 5. cap. 4. which alloweth them to doe it More often (than the 4. times) if neede doe so require.

They be also (for the moste parte) summoned for some speciall businesse, and not directed to the generall seruice of the Commission: And yet, there is no doubt, but that all the Articles wythin the Commission of the Peace, are bothe inquirable & determinable, at any speciall Session of the Peace.

M.

M. Fitzh. (as I haue alreadie noted) vseth a third difference betweene the generall and speciall Sessions of the Peace, affirming, ỹ whereas at the general Sessions, the Iustices of Peace ought of duty to giue in charge, al matters (within the Commission, or Statutes) that are to be determined before thẽ: yet neuertheleſſe at the ſpeciall Seſsions, they are at libertie to giue in charge, eyther all, or any of them, as it ſhall ſeeme good vnto themſelues.

What thinges be inquirable, at the ſpeciall *Seſſions* of the Peace.

I will not gainesay, but that the Iuſtices of Peace, may at any ſpeciall Seſsion of the Peace, giue in charge all ſuche Statutes as doe giue vnto them a generall power of enquirie, (without vſing mention of any Seſsion) as doth the Statute 25. H. 8. cap. 13. of Sheepe: yea, I will graunt, that they may alſo at their ſpeciall Seſsions of the Peace, giue in charge to enquire vpon all ſuche other Statutes, as do vſe the worde Seſsions indifferently, wythout adding Generall, or Speciall: of which ſort there bee a great many, as 5. E. 6. cap. 4. of fighting in Churche, or Churchyard: 14. H. 8. cap 11: & 19. H. 7. cap. 11. of Hunting: 5. Elizab. cap. 13: of linnen cloth: 2. & 3. Phil. & Mar. ca. 7: of Faires and Markets: 5. H. 4. cap. 3: of Seawatch: and 7. E. 6. cap. 5. of Wines: and ſundry others. But

whether they may there also enquire of such other statutes as do only assigne the enquirie to be made at the Quarter Sessions, you haue heard my minde, and read my reasons in the laste Chapter.

The vse of the speciall Sessions.

Howsoeuer it bée, there might bée great vse of the speciall Sessions of the Peace, if they were nowe and then holden (betweene the Quarter Sessions) to deliuer the Gaoles of vnruly seruants, sturdie vagabonds, ydle poore folks, petite théeues, and some others. For it is dayly prooued, that manye, being sent thither for correction, doe come forth more corrupted than they went in: whiche euill happeneth by long abode there in wicked company: whereas, if they hadde more spéedie triall, both they should be amended, and the Countrie lesse charged by it.

Forraine Realmes and Countries doe reape the fruite of spéedie Iustice, and if our Gaoles in *Englande* were more often swepte & emptied, I doubt not, but that wée also shoulde finde a sensible profite to arise by it.

Peraduenture some man will say, that by this meane we shall drawe vppon vs againe, the same inconuenience of troubling the Countrie that happened by the fire wéekes Sessions, which were therefore abrogated by the Statute. 37. H 8. cap. 7. But that

that is not to be feared: for, whereas those Sessions were to bee holden in euerie limite of the Shire, these may bee kept onelie where the Gaole standeth: the whyche, since it is commonly scituate in a populous Towne, shall bee easily able to furnishe thys seruice wythout calling any other vnto it.

Of the Rewardes and Punishments, due to *Iustices* of the Peace, in respect of their *Sessions*.

Cap. xxi.

WEl and euil doing, do from the firste to the laste deserue reward and punishment: and therfore, as we closed vppe the first parte of this Treatise wyth them: So also shall this latter Booke receiue the same ende and conclusion.

The Wages of the Iustice of the Peace at the Quarter Sessions.

Whilest it was at the liberty of the Iustices of Peace, to holde their Quarter Sessions as shorte time as they woulde, the Lawe did not allowe them anye Wages for theyr paines. But when the Statute (12. R. 2. cap. 10.) had bounde them (vnder paine of punishement) to continue their Sessions three dayes together, if the affaires of their office did so require: thē the same Statute thought it meet also to allow to euerie of them foure shillings by the daye for the time of theyr Session, to be payed by the hands of the Shirife, out of the Fines and Amerciaments rising of the same Sessions. And that the Lords of Franchises, shoulde bee contributories to those Wages, after the proportion of their partes of the sayde Fines and Amerciaments.

But, because it was verye Dilatorie for the Iustices of Peace, to take those Wages, at the handes of the Shirife (as I haue alreadie touched) vppon the Estreate sente out of the Escheaquer. and for that also it grewe in question, whether such Lordes, as were named in the Commissions of the Peace, shoulde bee partakers of the same Wages: the Statute (14. Ric 2. cap. 11.) did plainely prouide, that the Wages of these Iustices shoulde bee leuied and payed by the Shirife,

vpon

vpon Estreates doubled and indented betwene the Shirife and them: And that no Duke, Earle, Baron, or Baronet (albeit they were Iustices of the Peace, & did holde their Sessions with the other eight Iustices) should take anye Wages for their Office in this behalfe.

And hereof also M. Marr collecteth, ỳ howsoeuer many Commissioners of the Peace there shal be assembled at these Sessions, yet only eight of them shall receiue the wages, bycause (saith he) that at such time as these wages were first appointed, ỳ law did take knowledge and make allowãce of eight Iustices, and no more. And he also maketh it doubtfull, whether it lie not in the power of the Barons of the Eschequer, to appoint which eight (when moe be assembled at the Sessions) shall haue the wages paide them.

For the first point, it would be somewhat harde indeed, to straine that Statute so far, as to giue wages therby to so many Iustices as be nowe at these dayes in euerie Shire, and would be present at the Sessions. Yet ỳ Statute of Labourers. 5. El. ca. 4. ỳ willeth the Iustices of Peace in euerie shire to deuide thẽ selues, and to keepe two special sittings yerely for the execution of that Law, alloweth to as many of them as shall giue

their attēdance fiue shillings a day for three dayes togither. But concerning the latter, it seemeth by the late Statute it self, that the Shirife shal first paie the wages, and thē the Barons shal make the allowance, according to the Indenture. So that I see no libertie of such nomination left vnto them.

I confesse, that it might breede, bothe offence against the Shirife, & iealousie among the Iustices themselues, to haue one of them preferred before an other in this payment: & therefore I thinke it wisely done (as it is vsed) to bestow the whole allowance vppon the defraying of their Commune diet.

If the Fines and Amercements of ỳ same Sessions (sayeth M. Marr.) will not fullie amount to the sum of the wages then due to the Iustices, yet shal ỳ wages be ratably paid out of them, so farre as they will extende.

Buckstals.

Furthermore those two Iustices of ỳ peace, ỳ do in their Sessions cal before thē, any persō suspected to offēd ỳ Statute of Deerhayes, Buckstals, & Stalking, & do examine him therevpō & finde him faulty therin, shal haue the tenth part of the forfeiture growing therby. 19. H. 7. ca. 11.

Punishmēts at the commune law.

Hitherto of Reward, hencefoorth of punishment. It seemeth, by ỳ opinion of some Iustices (2. R. 3. 10.) ỳ if a Iustice of the Peace do any thing of Recorde ignorantly, & for want

of knowledge, that he shal not be punished for it. And this opinion of theirs is not new in this Realm, although it be otherwise truely said, *Imperitia quoq; culpæ adnumeratur*: for you may reade in the old lawes, of King Edgar (*cap.3.*) and of King Canute (*cap.14.*) that if a Iudge had erred in his office, he might then haue excused himselfe, by oath, That he did it not of euil minde. and that he knewe not how to do better: which I speake not, to comfort men in careleſſe ignorance, but to shew you that mē may erre, and that erring by infirmity they are not altogither vnworthie of pardon: and withall to let the Iustices of Peace sée, that it may be a fault to erre by ignorance, and that therfore they ought to stay where they méet with *nō liquet*, as their owne Commission doth direct them.

Now, on the other side, if a Iustice of the Peace will craftily embesill an Enditemēt, or wilfully raze any part therof, or malitiously enroll (or file) ỹ for an Enditement which was neuer found by ỹ Iurie. Then by ỹ resolution of al ỹ Iustices, assēbled before ỹ King in the Starre Chāber (2.R.3) a Cōmisiō may go out to enquire (by the oathes of 12. men) of such his misdemeanor, and if he bée conuicted therof, he deserueth to lose his office, & to make fine to the Queene according to

to ỹ quantitie of his misprision & office. *ibid. Fo.*10. And euen so may he be punished (as this booke leadeth me to thinke) if he alter an Enditement of Tresspas, into an Enditement of Felonie, howsoeuer the opiniõ (27. lib. Ass. Pl. 18) be found against it.

A Iustice of the Peace may also be endited of ỹ vnlawful taking of mony for doing his office, or of such other falsitie. Fitz. Nat. Br. 243. And if he cause a man to be endited at ỹ Sessions, by former conspiracie, or indirect practise, he is punishable for it as a priuate man. 21. E. 4. 67.

But if in the handling of a cause at ỹ open Sessions, it happen him to speake against an offendor somewhat excessiuely, yet he shal not be punished for it: *Iuris enim executio non habet iniuriã:* Neuertheless, Iudges oughte not to abuse their tongs by intẽperance, but they must rather take great hede (as Cicero, pro Font. saide, *Quibus verbis vtantur, ne quid minus moderatè positum, ne quid ab aliqua cupiditate prolapsum verbum esse videatur.*

Punishmẽts by Statutes. Thus farre of punishmẽts by ỹ commune Law, now to those by Statutes.

Alehouse. Fiue Marks. If ỹ Iustices of Peace, hauing taken a Recognusance for an Alehouse, do not certifie it at the nexte quarter Sessions of the peace, they shal lose fiue markes. 5. E. 6. ca. 25.

That

That next Iustice of ỹ Peace, which doth not certifie at the next generall Sessions of ỹ Peace such presentmẽts as the ouerseers of the Highwayes haue before presented vnto him, shall lose v. ℔. for euerie default. 2. & 3. Phil. & Mar. ca. 8: & 5. El. ca. 13. Highwaies. Fiue pound.

If any Iustice of ỹ Peace (not being sicke, nor hauing other lawful excuse, to be testified vnder ỹ Oath of one assessed in the Subsidie booke at v. ℔. &c.) do not assemble at the Easter Sessions to rate the wages of seruãts, &c. he shal lose x. ℔. to the Queene. 5. El: ca. 4. And if any Iustice of the Peace (so assẽbled) shal depart thẽce before conferẽce had about ỹ execution of this Acte for setting idle persons on worke, he shal forfeit v. ℔. 18. El. ca. 3. Seruaunts wages. Ten pounds. Poore on worke. Fiue pound.

The Iustice of ỹ Peace which faileth to record at ỹ nert quarter Sessions, the name of any person (auctorized to shoote in a Gun) ỹ hath presẽted his name vnto him, shal lose xx. ß. 2. E. 6. ca. 14. If that Statute do so far extend, wherof the words giue cause of doubt. Gunnes. Twentie shillings.

And if the Proclamation, annexed to the Statute 4. H. 7. ought now to be read, then if it be not read at each quarter Sessions. euerie Iustice of the Peace there present shall lose xx. ß. 4. H. 7. ca. 12 Proclamation reade. Twentie shillings.

If the Iustices of the Peace, before whõ any presentmẽt shal be made at their quarter Pope.

ter Sessions, against any person for extolling the auctoritie of the See of Rome, do not certifie the same into the Kings Bench within 40. dayes after, if the Tearme be then open, and if not, then at the first day of the nexte full Tearme, they shal euerie of them lose C. li. for euerie default. 5. El. ca. 1.

A hundreth poundes.

And those Iustices of the Peace, which do not certifie into ỹ Escheaquer, their examinations taken concerning the entring of plaintes by the Shirifes, shall lose xl. 8. 11. H. 7. ca. 15.

Examinations. Fortie shillings.

THE EPILOGVE.

The Epilogue.

THus haue I (by ỹ saue of God) brought this treatise to an end: wherin if many things haue escaped me vnseene, I doe not greatlye marueile, when I looke backe and behold the varietie & multitude of the matter that I haue passed thorough: and it shall not be harde for him that meeteth with such Estrayes, to take and lodge them in their right Titles here.

Againe, if I shal be thought to haue heaped vp too many conceites (borowed out of M. Marrowes reading) I make aunsweare, that I haue omitted many, and haue made the best choice that I could:

If

Alſo furthermoze, I ſhal ſéeme to thoſe that be maiſters in Arte & Methode, not to haue throughly obſerued their rules, and ſpecialye that κατ' αὐτὸ, bycauſe I do manye times mingle *aliena*, things not preciſelye pertayning to my matter in hand, To them I ſay, that it is the receiued manner of teaching in our law, To ſhew things by their contraries and differents: and ſéeing that great lighte commeth to the matter thereby, I may neyther condemne it as vnapt, noz reiect it as vnſeruiceable.

Moreouer, if I haue bene deceiued in laying downe ouerboldely mine owne opinion, I wil no leſſe gladlye be admoniſhed of it, than readily reforme my miſtakings:

Finally, whatſoeuer other thing is done amiſſe, I proteſt that it hath eſcaped of vnſkill, and not procéeded of wilfulneſſe, and therfore I deſire that I may be allowed the benefite of that Pardon, which (as I tolde you euen now) is in like caſe grauntable to a Iuſtice of the Peace.

FINIS.

FINIS.

A Table, conteining (verie neare) all the imprinted Statutes, *bothe generall and particular, wherewith* Iustices of the Peace haue in *any sorte to deale.*

King.	*Yeare.*	*Chap:*	*Content.*
He. the 3.	9	25	Of measures and weights.
	51		Thassise of Bread and Ale. The Iudgemēt of the pillory. The ordinaunce for measuring. Of weights and measures.
Ed. the 1.	3	9	Of fresh suite after Felons.
		10	Of Coroners.
		15	Of Bailement of Felons.
		25	Against maintenaunce.
		26	That Shirifes and other Ministers shall take no rewardes.
		27	Of fees for deliuering chapiters.
		28	Of Maintenance of quarrels.
	13	34	Of rauishing women.
		47	Of taking Salmons.
		49	Against maintenance.
			The Statute of *Winchester.*
	28	11	Against mainteinance.
	34		For measuring of lande.
			Definition of Champartors.
Ed. the 2.	1		For breaking Prisons.
	18		For Purueiours.
			For Estreats of the Escheaquer.
Ed. the 3.	1	14	For maintenance of quarels.

King.	Yeare.	Chap:	Content.
		16	For keeping of the Peace.
		17	Enditements before Shirifes to be taken by Indenture.
	2	3	For comming before the Kings Iuſtices with force & armes.
		6	A confirmation of the Statute of *Winchester*.
	4	2	Of Wardeins of the Peace.
		4	That Purueiours pay in hande, and haue a warrant vnder the great or ſmall Seale.
		10	Againſt Shirifes & Gaolers that will not receyue theeues, and ſuch other into their Gaoles.
	5	2	Againſt the Kings Purueiours.
		10	Iurours that take money ſhall no more paſſe vpon Iuries.
		11	That Iuſtices aſsigned to determine felonies haue power to write to forrein Countries.
		14	Againſt Robertſmen, and drawlatches.
	14	10	Gaoles of the Counties to bee annexed to the Shirifes.
	18.St.2	2	Iuſtices of Peace made.
	20	4.& 5	For mainteining of quarrels.
	23	6	For Vitailers.
	25	1	For Purueyours.
	25.St 4	3	For foreſtalling of Wines.
	25.St.5	9	Auncell weight taken away.
		10	For weight and meaſuring.
		15	For takers of Sheepe.
	27.St.2	4	None going to the Staple, be diſturbed by the Kings takers.
		10	For waights of the Staple.
	28	11	For ſafegard of Marchãts aliens cõming within this Realme.

For

King.	Yeare.	Chap:	Content.
	34	1	For Iuſtices of Peace.
		2	For Purueyours.
		5.& 6	Iuſtices of Peace to enquire of meaſures.
		22	For Hawkes found.
	36	2.3.4.5.6	Againſt Purueyours.
		12	For the Seſsions of the Peace.
	37	19	For finding of Hawkes.
	42	9	For leuying of the greene waxe.
Ric.the 2	1	3	All Statutes of Purueyours cõfirmed.
		4	For maintenaunce of quarrels.
		7	For giuing of Liueries.
	2	2	For foreſtalling of Wines.
	5	7	For entring into lands.
	7	8	For Purueyours.
		13	For riding in Harneſſe.
	12	3	A confirmation of all Statutes for Vitailers.
		6	For bearing weapons.
		10	Iuſtices of Peace to puniſh Vagabounds, and for holding their Seſsions.
	13	4	Clarke of the Market.
		7	Iuſtices of Peace be made a new
		8	For ptice of vitayle.
		9	For weights.
		13	For Hunters.
		19	For ſafegard of Fiſhe.
	14	11	For aſsigning of Iuſtices of Peace.
	15	2	For forcible entries.
		4	For meaſuring Corne.
	16	3	The Clarke of the market to haue readie his weightes according to the Standard.

King.	Yeare.	Chap:	Content.
		4	For liueries of companies.
	17	8	For Riots & vnlawful aſsẽblies.
		9	That Iuſtices of the Peace ſhall be conſeruatours of the Statutes made for Riuers.
		10	Two men of Lawe to bee aſsigned in the Commiſsion of the Peace to deliuer Gaoles.
	20	1	For riding armed in the Realme
		2	For wearing of Liueries.
He.the.4.	1	7	For giuing of Liueries.
		11	For extortion by Shirifes.
	2	14	For Purueyours.
		21	For giuing of Liueries.
	4	25	For Hoſtelers and Vitailers.
	5	3	For watche vpon the Sea coaſts.
		4	Multiplication made Felonie.
		5	For cutting tongues, and putting out of eyes.
		10	Iuſtices of Peace to impriſon men in the common Gaole.
	7	3	Of the maner of making out Eſtreates.
		7	For Arrowheads.
		14	For giuing of Liueries.
	13	7	Of Riots and Routes.
He.the 5.	1	10	For weights and meaſures of Corne.
	2	4	Of the Seſsions of the Peace.
		8	For reformation of Riots and Routes.
		9	Proceſſe againſt Riotours that flee into woodes.
	Stat. 2.	1	Of Iuſtices of Peace.
	3	7	For clipping, waſhing, and filing

King.	Yeare.	Chap:	Content.
			ling of money.
	8	3	For guilting and filuering.
	9 St.2.	8	Of falſe Weights.
	2	11	For the meaſure of Wines.
He.the 6.		14	For Goldſmithes ſelling worke of ſiluer.
	8	4	For giuing of Liueries.
		5	For weights.
		9	For forcible entries.
		10	For proceſſe in Enditements & Appeales.
		14	For Felons and Murderers, that voide themſelues into woods.
	11	6	For Commiſsions of Peace.
		8	For weights and meaſures.
		12	For Waxechaundlors.
	14	4	For Seſsions in *Midleſex*.
	18	11	A Iuſtice of Peace to haue twē-tie pound land.
		19	For Souldiours departing with out licence.
	20	8	For reſiſtance of Purueyours.
	23	1.& 2	Againſt Purueyours.
		10	For extortion of Shirifes.
		11	For leuying Knights wages for the Parliament.
		13	Proclayming the Statutes for vitailers.
	31	3	Of attachements in the Courtes of the Marches.
	33	2	A repeale of an act for Outlagaries in *Lancaſter*.
		7	For Attornies in *Norff.* & *Suff.*
Ed.the 4.	1	2	For Enditemēts & Preſentmēts in Shirifes Turnes and Leets.

King.	Yeare.	Chap:	Content.
	8	2	For Liueries of companies.
	12	2	For Bowſtaues.
		9	For Eſcheatours.
	17	4	For making of Tile.
Ric. the 3.	1	3	For Enquirie of eſcapes: for letting of ſuſpects of Felonie to Bayle.
		11	For Bowſtaues.
		12	For the meaſure of wine & oile.
He. the. 7.	1	7	Againſt Hunters.
	3	1	Giuing of Liueries: & certifying of *Recognuſance.* coroners.
		2	Taking Maydens, Widowes, or Wiues againſt their willes, made Felonie.
	7	4	For Weights and Meaſures.
	11	4	One Weight and Meaſure to be vſed thorow the Realme.
		9	For the inhabitants of North & South *Tindale.*
		15	Againſt vntrue demeaning of Shirifes and their Officers in holding their Counties.
		17	Againſt deſtroying of Pheſants and Partriches with vnlawfull Engines, and for Hawkes.
	12	5	For Weights and Meaſures.
	19	6	For Pewterers and Braſiers.
		11	For keeping of Deerehayes and Buckſtalles.
		13	For puniſhment of Riots.
He. the 8.	1	7	Cõcerning the office of Coroners.
	3	12	For reformation of Impanels for the King.

For

4	7	For Pewterers, and true waights and beames.
6	6	For remitting Priſoners to the place where the crime was cõmitted.
14.15	6	For High wayes in the Wealde of *Kent*.
	10	For hunting the Hart.
21	5	Fees for Teſtaments, and letters of Adminiſtration.
	7	Againſt ſeruaunts imbeſeling their Maiſters goods.
22	5	For repairing of bridges in high waies.
	10	Concerning *Egyptians*.
	11	For Powdike in Marſhland.
	14	How perſons commiting petie Treaſon ſhall abiure.
23	2	Where & after what maner the Gaoles within England ſhall be made.
	4	That no Brewers make veſſels, and the contents of barrels.
	16	That no Horſes be cõueyed into *Scotland* without licence.
24	4	For ſowing of Flaxe & Hempe.
	7	Againſt killing of Calues.
	9	Againſt killing of Weinlings,
	10	For Crowe nettes.
	13	For exceſſe in apparell.
25	6	For puniſhment of Buggerie.
	11	To auoid deſtruct. of wildfoule.
	13	What Sheepe a mã may keepe.
26	5	For not conueying any perſons goods or Cattels ouer the water of *Seuerne*, after Sunne ſet, vntill Sunne riſing.

King.	Yeare.	Chap:	Content.
		6	For *Wales*.
		7	For amending highe wayes in *Sussex*.
	27	5	Iustices of Peace in *Chester*.
		16	For inrolment of deedes.
		20	An order for Tithes.
		24	For recontinuing of certaine liberties takē frō the Crowne.
	32	3	Of Abiuration.
		7	For true payment of Tithes and offerings.
		9	Against maintenaunce, &c. vnlawfull buying of Titles.
		13	For breed of Horses of higher stature.
		41	For baking of Horse bread.
		43	Sessions in *Chester*.
	33	1	Concerning counterfait letters or tokens.
		5	For keeping of great Horses.
		6	For Crossebowes & Handguns.
		9	For maintenance of Artillerie, and debarring of vnlawfull games.
		10	For the execution of certaine Statutes.
		17	For confirmation and continuance of certaine Actes.
	34.35		For *Wales*.
		14	For certificate of conuicts to be made into the Kings bench.
	35	11	For paiment of Knights & Burgesses wages of the Parliament in *Wales*.
		17	For preseruation of woods.
	37	1	Of the *Custos Rotulorum*, and Clearks of the Peace.

For

		7	For abrogation of fixe weekes Seſsions.
		8	That Enditemẽts lacking *vi & armis* ſhall bee good enough.
		9	Againſt vſurie.
Ed.the 6.	1	1	Againſt ſuch as ſpeake againſt the Sacrament of the bodie and bloud of Ieſus Chriſte, and for the receipt thereof in bothe kindes.
		5	That no Horſes bee conueyed out of Englande without licence.
		7	For cõtinuance of proceſſe notwithſtanding newe commiſſion of the Peace.
		12	Of poyſoning.
	2.3	2	For true ſeruice in Capitaines and Souldiours.
		14	Againſt ſhooting of haileſhot.
		15	For vitailers and handycraftes men.
		24	For triall of murders in ſeuerall Counties.
	3.4	1	Of the *Cuſtos Rotulorum.*
		2	For true making of Woollen clothes.
		21	Of retayling Butter & Cheeſe.
	5.6	4	Againſt fighting & quarrelling in Churches.
		6	For true making of Woollen clothe.
		14	Againſt regrators, foreſtallers, and engroſſers.
		15	Againſt regrators of tanned leather.

King.	Yeare.	Chap:	Content.
		24	For making of Hattes at *Norwich* and in *Norfolke*.
		25	That Alehouſekeepers be boũd by *Recognuſance*.
	7	5	To auoid great prices of Wines.
		7	For the aſsiſe of Fuell.
Marie.	1	8	That Shirifs ſhal not be Iuſtices of Peace during their Office.
		9	For the incorporation of Phiſitions in *London*.
		12	Againſt vnlawfull aſſemblies.
Ph.& Mar.	1.2	2	For reformation of exceſſe in apparell.
		4	For puniſhment of *Egiptians*.
		5	For reſtreint of Corne &c. ouer the Sea.
		13	An order for baylement of priſoners.
	2.3	3	For keeping of milche Kyne & rearing of Calues.
		6	Againſt exceſsiue taking of Purueyours.
		7	For buying of ſtolen Horſes.
		8	For amending of high wayes.
		10	For examinatiõ of priſoners ſuſpected of mãſlaughter or Fel.
		13	For Woolles in *Halyfaxe*.
		15	That Purueyours ſhall not take vitaile within fiue miles of of *Cambridge* or *Oxford*.
		16	For watermen vpon *Thames*.
		18	For commiſsions of Peace, and Gaole deliuerie in Townes corporate not being coũties.
		19	For Powdike in Marſhland.

For

King.	Yeare.	Chap:	Content.
	4.5	2	For hauing Horſe, Armour and Weapon.
		3	For taking of Muſters.
Elizab.	1	1	For reſtoaring to the Crowne the auncient Iuriſdiction.
		2	For vniformitie of Prayer, and adminiſtration of the Sacraments.
		7	For cõueying horſes into *Scotlãd*
		12	Againſt deceiptfull vſing of linnen clothe.
		16	Againſt rebellious aſſemblies.
		17	For preſeruation of ſpawne and frye of Fiſhe.
		18	For cõtinuance of certaine Stat.
	5	1	For the aſſurãce of the Queenes power ouer all eſtates.
		2	For maintenance and increaſe of tillage.
		4	Orders for artificers ſeruaunts, and labourers.
		5	For maintenance of the Nauie.
		8	For Shoemakers &c. vſing currying of Leather.
		9	For puniſhment of Periurie.
		10	For ſeruaunts embeſeling their Maiſters goods.
		12	For Badgers of corne, and Drouers of cattel to be licenced.
		13	For amending of high wayes.
		15	Againſt fonde and phantaſticall Propheſies.
		16	Againſt Coniurations.
		17	For puniſhment of Buggerie.
		19	For repeale of a Stat. for cõueying Horſe out of the Realme.

For

King.	Yeare.	Chap:	Content.
		20	For punishmẽt of Vagabounds faining themselues *Egyptians*.
		21	For punishmeut of vnlawful taking of fishe.
		24	For repairing of Gaoles.
	8	3	Against carying of Sheepe ouer the Sea aliue.
		8	For repeale of a braunche of a Statute for the stature of horses in the Ile of *Ely*.
		9	For repeale of a braunche of a Statute for the prices of barrels and kilderkins.
		10	For Bowyers and the price of Bowes.
	13	2	For bringing in, and putting in execution Bulles from *Rome*.
		8	Against Vsurie.
		9	For Commission for Sewers.
		11	For maintenance of Nauigatiõ.
		13	For increase of Tillage.
		14	For bringing Bowstaues into the Realme.
		19	For making of Cappes.
		21	That Purueyours maye take corne and vitaile within fiue miles of *Cambridge* & *Oxford*, in certeine cases.
		23	For pauing a streete without Algate.
		25	For cõtinuance of certaine Statutes.
	14	1	For such as rebelliously deteine any of the Queenes Castels.
		2	Against such as practise the enlargemẽt of any prisoner cõmitted for high Treason.

For

King.	Yeare.	Chap:	Content.
		5	For punishment of Vagabondes and reliefe of the poore.
		11	For continuation, explanation, &c. of diuers Statutes.
	18	1	Agaynst diminishinge of the Queenes coyne, and other coynes currant within the Realme.
		3	For settyng poore people on worke.
		5	To redresse disorders in cõmon Informers vpon penal lawes.
		7	For taking away Cleargie from the offendors in Rape & Burglarie, and an ordre for deliuering Clearks cõuict without purgation.
		9	For mending High wayes.
		18	For repayring of *Chepstowe* bridge.
		20	For repayring Bridges & highwayes neare *Oxford*.
	23	1	For due obedience to thé Queene.
		2	Againſt seditious woordes, or rumors.
		9	Againſt logwood, or blocwood.
		10	For Phesantes and Partriches.
		11	For *Cardiffe* bridge.
		12	For pauing without Algate.

